

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

OCT 29 1971

TELETYPE

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, ES	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Cleveland	_____
Mr. Ponder	_____
Mr. Bates	_____
Mr. Tavel	_____
Mr. Walters	_____
Mr. Soyars	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

NR004 KX PLAIN

5:25 PM 10-29-71 PXS 4P

TO DIRECTOR NITEL

MEMPHIS (164-76) URGENT

JACKSONVILLE (164-103) NITEL

FROM KNOXVILLE (164-33)

GEORGE MALLORY GIFFE, JR. (DECEASED);

MRS. GEORGE M. GIFFE, JR. AKA-VICTIM

(DECEASED); BRENT DOWNS-VICTIM (DECEASED);

VICTIM; CAA-HIJACKING; KIDNAPING; FTCA.

OO. JACKSONVILLE.

RE WASHINGTON FIELD TEL TO BUREAU OCT. TWENTYSIX
LAST.

GEORGE DUGGER, ATTORNEY, ELIZABETHTON, TENN., INTER-
VIEWED OCT. TWENTYEIGHT LAST, KNOXVILLE, TENN., WITH
FOLLOWING RESULTS:

DUGGER, AGE SEVENTYFIVE, WAS CONTACTED SIX OR SEVEN
MONTHS AGO IN ELIZABETHTON, TENN., BY

CADE, INC. NASHVILLE, TENN., RE PREPARING A

END PAGE ONE

55 NOV 9 1971

NOV 3 1971

PAGE TWO

KX 164-33

CHARTER IN BLANK FOR CADE, INC. WHOSE ATTORNEY [REDACTED]

b6
b7C

[REDACTED] WAS TO FILL IN APPROPRIATE SPACES AND REGISTER
SAME IN NASHVILLE, TENN. AT THIS TIME GIFFE WAS CHAIRMAN
OF THE BOARD OF CADE, INC.

LATER ON DURING BUSINESS TRIP TO NASHVILLE, TENN.
HE VISTED APARTMENT OF GIFFE AND FOLLOWING INDIVIDUALS
PRESENT: GIFFE, HIS WIFE AND SMALL CHILD; [REDACTED]
[REDACTED] NEGRO COACH AT TENN. A AND I, AND HIS WIFE;
AND [REDACTED] FISK UNIVERSITY, AND HIS WIFE. [REDACTED]
[REDACTED] MAY BE CONNECTED WITH CADE, INC., NASHVILLE,
TENN.

IN SEPTEMBER SEVENTYONE, GIFFE AND [REDACTED] VISITED
HIM IN ELIZABETHTON, TENN., AND THEY TRAVELED TO ROGERSVILLE,
TENN. TO A FARM OWNED BY [REDACTED] TAX ATTORNEY,
WASHINGTON, D.C., WHO WITH WIFE WAS VISITING FARM. AT
FARM GIFFE REMARKED HE WAS GOING QUOTE TO BREAK [REDACTED]
NECK END QUOTE OR WORDS TO THAT EFFECT BECAUSE [REDACTED]
FROM CLEVELAND, TENN., AND MAJOR STOCKHOLDER CONSOLIDATED
END PAGE TWO

PAGE THREE

KX 164-33

GOLD AND PYRITE CORP. (CGPC), WHO CANCELED LEASES RE
RIGHT OF CGPC IN GEORGIA. DUGGER INDICATED APPARENTLY
GIFFE WAS TO START OPERATIONS WITHIN NINETY DAYS IN
GEORGIA WHERE CGPC HAD MINERAL RIGHTS TO APPROXIMATELY
SIXTYTWO HUNDRED ACRES OF LAND LOCATED FORTY MILES NORTH
OF ATLANTA, GEORGIA, AND GIFFE HAD FAILED TO DO SO.

GIFFE, FORMERLY TEACHER OR PROFESSOR PEABODY COLLEGE,
NASHVILLE, TENN., MET WIFE WHILE WAS STUDENT THERE
AND LATER MARRIED HER. LATER ON GIFFE WENT INTO REAL
ESTATE BUSINESS. GIFFE LEFT IMPRESSION WITH DUGGER HE,
GIFFE, AT ONE TIME CONNECTED WITH INTELLIGENCE SERVICE,
POSSIBLY DURING KOREAN WAR, AS GIFFE PRETENDED HE COULD
MAKE A CHECK ON ANYONE. HE HEARD THAT GIFFE'S WIFE LEFT
HIM NINE DAY PRIOR TO THE HIJACKING OF AIRPLANE IN
NASHVILLE, TENN., AND GIFFE ALWAYS CARRIED A GUN, HOWEVER,
HE NEVER OBSERVED GUN ON GIFFE'S PERSON. STATED ONLY
OCCASION GIFFE ACTED OUT OF ORDINARY OR LOST HIS TEMPER
WAS DURING VISIT TO [REDACTED] FARM IN SEPT. SEVENTYONE
END PAGR THREE

b6
b7C

PAGE FOUR

KX 164-33

MEMPHIS AT NASHVILLE, TENN., WILL IF NOT ALREADY
DONE SO, INTERVIEW [REDACTED] NEGRO COACH, FISK UNIVERSITY,
AND [REDACTED] CADE, INC., RE THEIR
ASSOCIATION WITH AND KNOWLEDGE OF SUBJECT GIFFE. IN
RE TEL INFORMATION SET FORTH RE POSSIBLE INTERVIEW WITH
[REDACTED]

b6
b7C

FD THREE ZERO TWOS FOLLOW TO JACKSONVILLE.

BUREAU HAS INSTRUCTED THIS CASE MUST RECEIVE PREFERRED
AND CONTINUOUS ATTENTION. RESULT OF LEADS MUST BE SENT
BY TELETYPE AND ALL PERTINENT INFORMATION PLACED IN
FD THREE ZERO TWOS.

END

EJF FBI WASH DC

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

NOV 3 1971

WESTERN UNION

89-415 WSH

TLXA071 (44)LA094

L SJA515 DC NL PDF TDSJ SARATOGA CALIF 2

MR J EDGER HOOVER

DIRECTOR OFFBI WASHDC

George mallery Giff JR

JUST HEARD THE JACKSONVILLE FLORIDA TAPE REGARDING THE HIJACK

I AM A COMMERCIAL PILOT AND DO NOT WANT SOME SOB FROM THE FBI

MAKING MY DECISIONS FOR ME I WILL EXPECT AN ANSWER

Mr. Tolson	
Mr. Felt	
Mr. Rosen	
Mr. Mohr	
Mr. Bishop	
Mr. Miller, ES	
Mr. Callahan	
Mr. Casper	
Mr. Conrad	
Mr. Dalbey	
Mr. Cleveland	
Mr. Ponder	
Mr. Bates	
Mr. Tavel	
Mr. Walters	
Mr. Soyars	
Tele. Room	
Miss Holmes	
Miss Gandy	



701A EST

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Donou

REC-52

RECEIVED-10/20/71

164-2042-139

89-415 WSH

REC.D - 1025H

NOV 3 8 40 AM '71

NOV 3 10 12 AM '71

20 NOV 5 1971

67 NOV 8 1971

MR. FELT FOR THE DIRECTOR

CC: Mr. Bishop

Gene

z/mr

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

OCT 30 1971

TELETYPE

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
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Mr. Miller, ES	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
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Mr. Walters	_____
Mr. Soyars	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

NR 03 ME PLAIN

6:08P.M. NITEL 10-30-71 KJW

TO DIRECTOR

JACKSONVILLE (164-103)

FROM MEMPHIS (164-76)

GEORGE MALLORY GIFFE, JR., AKA (DECEASED);

SUSAN LAKICH GIFFE, AKA - VICTIM (DECEASED); BRENT

QUINTON DOWNS - VICTIM (DECEASED);

VICTIM; CAA - HIJACKING, INTIMIDATION OF CREW MEMBERS, CARRYING
A CONCEALED WEAPON; KIDNAPING; FTCA. OO JACKSONVILLE.

MEMPHIS NITEL SUMMARY.

CONTACT WITH USA CHARLES ANDERSON, MDT, NASHVILLE, THIS
DATE DETERMINED NO FURTHER CIVIL ACTION FILED SINCE OCTOBER
TWENTYEIGHT LAST AND WILL BE PREPARED FOR ARGUMENTS IN
OPPOSITION TO MOTIONS AND MEMORANDA AT HEARING SET FOR
ONE THIRTY P.M., NOVEMBER ONE NEXT BEFORE U. S. DISTRICT
JUDGE FRANK GRAY, JR., NASHVILLE. USDJ GRAY IS EXPECTED TO
RENDER SOME DECISION ON CASE THAT DATE.

THIS DATE REPORT CONTAINING RESULTS OF ALL CIVIL ACTIONS
FILED TO DATE PREPARED AND WILL BE SENT TO MEMPHIS FROM
NASHVILLE RA AND FORWARDED TO BUREAU AS SOON AS POSSIBLE.

END PAGE ONE

REC-12

17 NOV 3 1971

50 NOV 9 1971

ME 164-76

PAGE TWO

CONTINUOUS INVESTIGATION TO LOCATE ADDITIONAL ASSOCIATES
OF SUBJECTS GIFFE AND [REDACTED] NEGATIVE TO DATE. THROUGH
CONTACTS WITH ASSOCIATES OF SUBJECT GIFFE, HIS MENTAL CONDITION
AND STABILITY FOR THIRTY-DAY PERIOD PRIOR TO HIJACKING WILL
BE OBTAINED.

b6
b7c

MEMPHIS DIVISION HAS NOT YET BEEN ABLE TO CONTACT [REDACTED]
[REDACTED] CO PILOT OF HIJACKED PLANE, TO OBTAIN INFORMATION
DESIRED BY BUREAU, BUT WILL BE DONE AS SOON AS POSSIBLE.

THIS CASE IS RECEIVING PREFERRED AND CONTINUOUS
ATTENTION. P END.

KPT
CLR WASH

FBI

Date: 10/28/71

Transmit the following in _____
(Type in plaintext or code)Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI

FROM: SAC, MEMPHIS (164-76) - P -

SUBJECT: GEORGE MALLORY GIFFE, JR. (DECEASED);b6
b7C

MRS. SUSAN LAKICH GIFFE, aka -
VICTIM (DECEASED);
BRENT QUINTON DOWNS, aka -
VICTIM (DECEASED);

CAA-HIJACKING; KIDNAPING; FTCA
(OO: Jacksonville)

Re Memphis teletype to Bureau and Jacksonville
 10/26/71.

Enclosed for the Bureau is one copy each of the
 following:

- (1) Notice of Motion of WSM, Inc., to intervene as plaintiffs received USA's Office, MDT, Nashville, 10/25/71.
- (2) Amendment to petition to perpetuate evidence received USA's Office, MDT, Nashville, 10/26/71.
- (3) Memorandum of WSM, Inc., in support of motion to intervene.
- (4) Memorandum of Government in opposition to application for public disclosure of information and petition.
- (5) Memorandum of Government in opposition to intervention.

ENCLOSURE ATTACHED

Enclosed for Jacksonville is one copy of each of
 the above.

- 2 - Bureau (Enc. 5) -
 2 - Jacksonville (164-103) (Enc. 5)
 2 - Memphis

RAM:ca (6)

REC-12

NOV 1 1971

Approved

34 NOV 9 1971

Special Agent in Charge

Sent _____ M Per _____

ME 164-76

As Bureau was advised in retel, USDC Judge FRANK GRAY, JR., MDT, Nashville, continued 10/26/71 hearing on all motions and petitions until 11/1/71 at 1:30 P.M., and set date of 10/28/71 for all petitioners to file answers to Government briefs. USDC Judge GRAY said on 10/26/71 that an analysis of all the petitions, motions, and responses was necessary before any decision could be reached and expected that decision to be made on 11/1/71 hearing.

Bureau will be promptly advised of all aspects of the civil actions filed in this case.

ENCLOSURES TO BUREAU

FROM: SAC, MEMPHIS (164-76)

GEORGE MALLORY GIFFE, JR. (DEC.);
ET AL.
CAA-HIJACKING (ETC.)

(1) Notice of Motion of WSM, INC.,
to intervene as plaintiffs rec'd
USA's Office, Nashville, 10/25/71.

(2) Amendment to petition to
perpetuate evidence rec'd USA's
Office, Nashville, 10/26/71.

(3) Memo of WSM, Inc. in support of motion
to intervene.

(4) Memo of Government in opposition
to application for public disclosure
of info & petition.

(5) Memo of Government in opposition
to intervention.

164-242-141

ENCLOSURE

RECEIVED

OCT 25 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

U. S. ATTORNEY'S OFFICE
NASHVILLE, TENNESSEE

NASHVILLE DIVISION

BIG BROTHERS AIRCRAFT, INC.,)
et al)
WLAC-TV, INC.)
WSM, INCORPORATED,)
Intervenors)

vs.)

JOHN VOLPE, Secretary of)
Transportation, Federal)
Aviation Administration)
JOHN SHAFFER, Administrator,)
J. EDGAR HOOVER, Director of)
the Federal Bureau of)
Investigation)

CIVIL ACTION NO. 6322

MOTION TO INTERVENE
AS A PLAINTIFF

NOTICE OF MOTION

TO: Jack A. Butler, Esquire
Thomas Wardlaw Steele, Esquire
Gilbert S. Merritt, Esquire
Attorneys for Plaintiffs

William R. Willis, Jr., Esquire
Attorney for Intervenor
WLAC-TV, INC.

The Honorable John Mitchell
Attorney General of the United States

The Honorable Charles Hill Anderson
United States Attorney for the
Middle District of Tennessee
Attorneys for Defendants

Please take notice, that the undersigned will bring the
above motion on for a hearing before this Court at the United
States Courthouse, Nashville, Tennessee, on the 26th day of
October, 1971, at 3:30 P.M. of that day or as soon thereafter
as counsel can be heard.

Walter M. Robinson, Jr.
Walter M. Robinson, Jr.
Attorney for Intervenor
WSM, INCORPORATED
National Life Center
Nashville, Tennessee 37203

RECEIVED

007 25 1971

U. S. ATTORNEY'S OFFICE,
NASHVILLE, TENNESSEE

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE

Nashville Division

BIG BROTHERS AIRCRAFT, INC.,
et al
WLAC-TV, INC., Applicant
for intervention
WSM, INC., Applicant for
intervention

VS.

JOHN VOLPE, Secretary of
Transportation, Federal
Aviation Administration
JOHN SHAFFER, Administrator,
J. EDGAR HOOVER, Director of
the Federal Bureau of Investi-
gation

CIVIL ACTION NO. 6322 .

MOTION TO INTERVENE
AS A PLAINTIFF

MOTION TO INTERVENE

1. WSM, INC., a Tennessee corporation, with its principal place of business located in Nashville, Tennessee, moves for leave to intervene as Plaintiff in this action in order to file its petition which is attached hereto.

2. WSM, INC. is owner and operator of a television station and two radio stations that broadcast news and other matters of public interest in the Middle Tennessee area.

3. WSM, INC. avers that it has an interest in certain property which is the subject of these proceedings and that Intervenor's interest may only be adequately protected by its intervention therein.

4. The original plaintiffs have requested an order which would make certain tape recordings a part of the public record of this case. Intervenor desires to obtain these recordings (or reproductions thereof) for its use in properly informing the public; that to the extent that the original plaintiff or any intervenor

or other party should obtain an order which would make said tapes unavailable to the Intervenor, WSM, INC., its rights are affected and may be protected only by an order.

Walter M. Robinson, Jr.

Walter M. Robinson, Jr.
Attorney for WSM, INC.
Applicant for Intervention

I certify that a copy of the above pleading has been furnished to counsel for all interested parties by delivery or by placing same in the United States mail, postage prepaid, this 22 day of October, 1971.

Walter M. Robinson, Jr.

Walter M. Robinson, Jr.

RECEIVED

OCT 25 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

U. S. ATTORNEY'S OFFICE
NASHVILLE, TENNESSEE

NASHVILLE DIVISION

BIG BROTHERS AIRCRAFT, INC.,)
et al)
WLAC-TV, INC., Intervenor)
WSM, INCORPORATED, Intervenor)

vs.)

CIVIL ACTION NO. 6322

JOHN VOLPE, Secretary of)
Transportation, Federal)
Aviation Administration,)
JOHN SHAFFER, Administrator,)
J. EDGAR HOOVER, Director of)
the Federal Bureau of)
Investigation)

INTERVENOR'S PETITION


1. The Intervenor, WSM, Incorporated, is a Tennessee corporation, doing business in Nashville, Davidson County, Tennessee, and is owner and operator of a television station and two radio stations that broadcast news and other programs in the Middle Tennessee area.

2. Defendant, John Volpe, is the Chief Executive Officer of the Department of Transportation, which has direct authority over the Federal Aviation Administration. Defendant, Federal Aviation Administration, and John Shaffer, Administrator, operate the air traffic control facility at the Jacksonville, Florida, airport where certain tape recordings were made, as specified herein, and have the custody and control of such tape recordings. Defendant, J. Edgar Hoover, is the Chief Executive Officer of the Federal Bureau of Investigation, which exercised authority over the occurrence during which the tape recordings were made, and which may have custody and control of the tape recordings.

3. On or about October 4, 1971, an airplane owned by Big Brothers Aircraft, Inc., was hijacked and in which three people were killed. On or about said date certain tape recordings were made by Defendants at the airport in Jacksonville, Florida, and Jacksonville Air Control Center, Hilliard, Florida. These tapes record certain communications between the air traffic control tower in Jacksonville and said airplane. Intervenor's employees have on numerous occasions requested Defendants to make available to WSM, Incorporated, such recordings or be allowed to make copies thereof. However, Defendants have in every instance refused to make such recordings available to WSM, Incorporated, in order that copies be made therefrom.

4. Intervenor, WSM, Incorporated, believes these tape recordings are of substantial and legitimate public interest and are public records available to it under Title 5, Section 552 of the United States Code which requires such information to be made available to any person upon request.

WHEREFORE, Intervenor prays that an early hearing be held as provided in Title 5, Section 552 of the United States Code, and that Defendants be required to turn over said recordings to Intervenor, WSM, Incorporated, or to allow said Intervenor to make copies of same.


Walter M. Robinson, Jr.
Attorney for Intervenor
WSM, Incorporated

I certify that a copy of
the above pleading has been
furnished to counsel for all
interested parties by delivery
or by placing same in the United
States mail, postage prepaid,
this 22nd day of October, 1971.

Walter M. Robinson, Jr.
Walter M. Robinson, Jr.

IN THE UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE
Nashville Division

MRS. BRENT QUINTON DOWNS and
ANDREW ARTHUR DOWNS, 622 Paces
Ferry Road, Nashville, Tennessee,

SUSAN GERMAINE GIFFE and MAJOR
AND MRS. JOSEPH S. LAKICH, 4122
Moss Rose Drive, Nashville, Tennessee,

BIG BROTHERS AIRCRAFT, INC., and
M. P. BROTHERS, JR., Nashville
Metropolitan Airport, Nashville,
Tennessee,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

CIVIL ACTION NO. _____
PETITION TO PERPETUATE
EVIDENCE

RECEIVED

OCT 26 1971

U. S. ATTORNEY'S OFFICE
NASHVILLE, TENNESSEE

M O T I O N

Petitioners move the Court to amend the Petition to
Perpetuate Evidence heretofore filed in the following particulars:

1. By adding to the list of persons whose depositions
petitioners propose to take as set forth in paragraph four of
the petition the following additional names and descriptions.

(vi) James K. Jetton, an FAA employee who was the
radio controller handling the hijacked aircraft
at the Jacksonville Center in Hilliard, Florida.

(vii) Joe M. Hinson, an FAA supervisor who monitored
James K. Jetton's handling of the hijacked
aircraft at the Jacksonville Center.

(viii) Buddy C. Friedlin, an FAA supervisor at the
Jacksonville Center who purportedly made a
land line call to Jacksonville tower to
ascertain if the pilot's request for refueling,
etc., were to be complied with.

(ix) Roger Meyer, an FBI agent stationed in Nashville,
Tennessee, who talked to Major and Mrs. Joseph S.

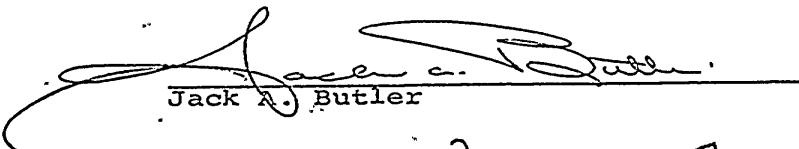
Lakich concerning the hijacking of the aircraft on the night it occurred, both prior to and subsequent to its arrival in Jacksonville, Florida, and who was informed by them of the dangerous propensities of one of the passengers thereon if thwarted in his plans for the hijacked aircraft.

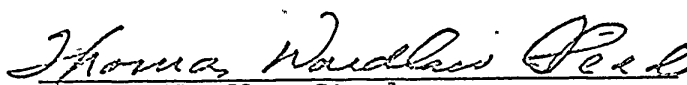
- (x) Any other federal employees who were present at the Jacksonville Tower at the time of the communication between it and the hijacked aircraft by radio communications or at the time of radio or telephone communications between FBI agents present in the Tower during the incident described in the petition.

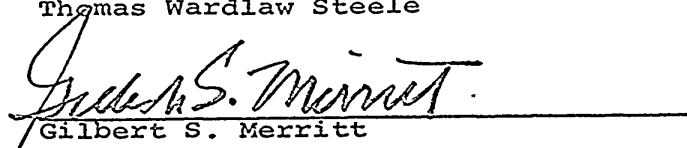
2. By adding to the said petition an additional paragraph as follows:

- 9. Requiring the government to permit petitioners' attorneys to hear, copy and transcribe any and all recorded conversations, whether telephonic or radio conversations, between agents of the FBI concerning the handling of and the dispensing of information relative to the hijacked aircraft, regardless of the point of origin and destination of said conversations, including but not limited to recordings of all FBI agents in Jacksonville, Florida, and its environs, regarding any and all conversation between FBI agents at the Jacksonville Tower and automobiles or other points of Jacksonville, Florida, and its environs; and any and all conversations between FBI agents in Jacksonville, Florida, and Nashville, Tennessee,

and other FBI agents or employees in
Washington, D. C.


Jack A. Butler


Thomas Wardlaw Steele


Gilbert S. Merritt

Of Counsel:

Gullett, Steele, Sanford, Robinson & Merritt
23rd Floor, Life & Casualty Tower
Nashville, Tennessee 37219

Certificate of Service

I hereby certify that I have mailed to the United States
Attorney, Counsel for the Respondent, a copy of the above Motion
on this 26th day of October, 1971.


Gilbert S. Merritt

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

BIG BROTHERS AIRCRAFT, INC.,)
et al)
WLAC-TV, INC., Intervenor)
WSM, INCORPORATED, Intervenor)

vs.)

CIVIL ACTION NO. 6322

JOHN VOLPE, Secretary of)
Transportation, Federal)
Aviation Administration,)
JOHN SHAFFER, Administrator,)
J. EDGAR HOOVER, Director of)
the Federal Bureau of)
Investigation)

MEMORANDUM OF WSM, INCORPORATED
IN SUPPORT OF MOTION TO INTERVENE

I. Rule 24(a) and Rule 24(b) are to be liberally construed, in order to avoid a multiplicity of suits, and the motion to intervene should be granted where possible. Brotherhood of Locomotive Engineers vs. Chi., M., St. P., and P.R. Co., 34 F. Supp. 594. Nuesse vs. Camp (C.A. D.C. 1967) 385 F. 2d 385.

II. Should the motion be granted, the original petition, with intervening petitions, should be set for hearing at an early date. Plaintiff WSM, Incorporated submits that Rule 12(a), Federal Rules of Civil Procedure does not apply, in that the language of 5 USCA 522 (a)(3) clearly contemplates action thereunder calling for extraordinary process under expedited procedures. This has been recognized in numerous cases, including Bristol-Myers vs. FTC (C.A.D.C. 1970), 424 F. 2d 935.

III. Plaintiff WSM mentions the merits of the intervening petition only to respond briefly to certain points made in the memorandum presented earlier today by defendant.

The requested record does not fall within the "investigative file" exemption to the Public Information Act, in that previous proceedings in this Court have revealed that it is a recording of a routine nature kept and maintained at many airports under FAA jurisdiction. That it may ultimately be used in some law enforcement proceeding does not bring it within the exemption. Bristol-Myers Co. vs. FTC., supra. Any administrative attempts to broaden the scope of the exemption would, of course, be invalid.

The burden of proof of the existence of the exemption, of course, is on the defendant. 5 USCA 522 (a)(3).

Respectfully submitted

James R. Tuck
Attorney for Plaintiff
WSM, Incorporated

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MRS. BRENT QUINTON DOWNS,
et al.

V.

UNITED STATES OF AMERICA

CIVIL NO. _____

MEMORANDUM IN OPPOSITION
TO APPLICATION FOR PUBLIC DISCLOSURE
OF INFORMATION AND PETITION

A. The United States of America opposes the application of the petitioners to have their transcript of tapes, attached as an exhibit to their petition, made a part of the public record in the case for the following reasons:

1. The Government has not had an opportunity to compare the transcript submitted by the petitioners with the actual tapes. If any transcript is to be made a part of the public record, the Government insists that it be accurate and complete, especially in view of the publicity the transcript will certainly receive.

2. The Respondent, representing the prosecution in a related pending criminal case which could be transferred to this Court, as a matter of professional ethics must resist the application.

The American Bar Association's Standards on Fair Trial and Free Press reads:

It is the duty of the lawyer not to release or authorize the release of information...for dissemination by any means of public communication, in connection with pending or imminent criminal litigation with which he is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

The criminal defendant's local attorney specifically has not assented to the release of the transcripts to the press. Clearly, the prosecution should not.

3. The transcript filed as an exhibit to the petition has nothing to do with the petitioners' application for discovery. Petitioners, of course, already have been given access to the information contained in the transcript. Petitioners' only apparent purpose in seeking to have the transcript made a part of the public record is to circumvent the agreement between their attorneys and the attorneys for the United States to the effect that access to the information on the tapes would be limited to petitioners and their attorneys.

B. The United States opposes the Petition to Perpetuate Evidence as not authorized by FED. R. CIV. P. 27:

1. The purpose of Rule 27 was not for the purpose of discovery before action is commenced, and to allow it to be used for this purpose would be an "abuse of the rule." 8 WRIGHT, FED. PRAC. & PROCEDURE: Civil §2071, pp. 332-333.

2. The petition is to be filed in the district where the expected party defendant resides. If the individual agents are to be sued, properly the petition should be filed in the Florida district.

3. The petition fails to state the substance of the testimony they are attempting to perpetuate.

4. This petition for discovery should not, in any event, be entertained, since no federal district court would have jurisdiction over the subject matter of the action which petitioners propose to bring in the future.

Since the petition must show that the expected action will be within federal jurisdiction, a petition is insufficient if it shows the petitioner is presently unable to bring an expected action in

federal court merely because of the absence of adequate grounds of federal jurisdiction.

4 MOORE'S FEDERAL PRACTICE,
Paragraph 27.02[2], p. 1821

The cause of action alleged in Exhibit A to the petition will never be cognizable under the Federal Tort Claims Act, involving, as it does, the charge that government officials negligently fired upon an airplane being hijacked in violation of federal law, since the claim falls squarely within two exceptions to the Federal Tort Claims Act. The manner in which federal officials fulfill their duty to maintain law and order is discretionary, and petitioners' claim is thus within the exception provided by 28 U.S.C. § 2680(a). United States v. Faneca, 332 F.2d 872 (5th Cir. 1965) [involving the firing of tear gas into a crowd by federal marshals]. Insofar as any personal injuries were caused by shots fired by federal officials, even if the shots were fired negligently, the tort is a battery within the exclusion provided by 28 U.S.C. § 2680(h). Moos v. United States, 225 F.2d 705 (8th Cir. 1955); United States v. Faneca, supra.

It must, therefore, be concluded that this petition pursuant to Rule 27 of the Federal Rules of Civil Procedure may not be maintained, since the showing of jurisdiction in the proposed action is so tenuous.

In Petition of Ferkauf, 3 F.R.D. 89 (S.D. N.Y. 1943), the court denied a petition pursuant to Rule 27:

Doubtless, as seems to be assumed, this court would have jurisdiction if the action were brought here; but the presumption is always against jurisdiction in a Federal court. The petition should have been more definite on this point.

Petition of Ferkauf, supra, at p. 92

5. The petition should not be entertained by the Court because it seeks an order to compel government employees to do what they are expressly forbidden to do.

28 CODE FED. REGS. §§ 16.12, 16.13 prohibit F.B.I. agents disclosing any information from agency files without prior approval of the Attorney General, even though ordered by the Court. Copies of these regulations are submitted herewith.

While 49 CODE FED. REGS. § 9.5 permits an F.A.A. employee to testify as to facts in proceedings against the United States (but not expert or opinion testimony), there is no authorization for discovery of agency records except upon clearance by the Department General Counsel.




CHARLES H. ANDERSON
United States Attorney

879 U. S. Court House
P. O. Box 800
Nashville, Tennessee 37202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon counsel of record for all parties at interest in this cause by hand delivery.

This the 26th day of Oct. 1971


United States Attorney

§ 16.6 Records of the Immigration and Naturalization Service and of the Board of Immigration Appeals.

(a) Requests for records of the Immigration and Naturalization Service (the "Service") or the Board of Immigration Appeals (the "Board") shall be made in accordance with the regulations of the Service found in 8 CFR 103.10.

(b) The Service is authorized to grant a request for a record filed on Form N-585 to the extent set forth in § 103.10 of its regulations. A request on Form N-585 involving any other Service or Board record shall be forwarded by the Service to the Deputy Attorney General together with (1) a copy of any identified record and a recommendation as to whether it shall be made available, or (2) a brief summary of what has been done to identify or find a record which could not be identified or found. The forwarding office will be notified promptly following the decision of the Deputy Attorney General and will give prompt notice thereof to the person submitting the request. Where appropriate, such notice will recite the place, time, and manner in which a record will be made available.

(c) Notwithstanding the provisions of this § 16.6 or of any other regulation, no officer or employee of the Service or of the Board shall make available any record which the Attorney General has determined shall not be made available.

§ 16.7 Administrative decision and review.

(a) All Forms D.J. 118 received at any of the offices listed in § 16.2 shall be forwarded to the Deputy Attorney General. If the office receiving the request also has possession of the record or a copy thereof, there shall be included with the forwarded Form D.J. 118 a copy of the record and a recommendation by that office whether the requested record should be made available.

(b) The Deputy Attorney General shall grant or deny each request made on a Form D.J. 118 or on a Form N-585 forwarded pursuant to § 16.6(b). The denial of each request shall be in writing and shall contain a simple statement of reasons for the denial. The decision of the Deputy Attorney General shall be final, subject only to review as provided in paragraph (c) of this section.

(c) Review of the decision of the Deputy Attorney General may be requested by the person submitting the Form D.J. 118 or N-585 within 30 days after the date of the notice advising him of the decision. The filing of a request for review may be accomplished by mailing to the Attorney General, Department of Justice, Washington, D.C. 20530, by certified mail, a copy of the written denial issued under paragraph (b) of this section and a statement of the circumstances, reasons or arguments advanced for insistence upon disclosure of the originally requested record. The decision after review will be promptly communicated to the person requesting review, and will constitute the final action of the Department.

Subpart B—Production in Response to Subpenas or Demands of Courts or Other Authorities**§ 16.11 Purpose and scope.**

This subpart contains the regulations of the Department of Justice concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a "demand") of a court or other authority is issued for the production or disclosure of (a) any material contained in the files of the Department, (b) any information relating to material contained in the files of the Department, or (c) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status. For the purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of, the Attorney General of the United States, including U.S. attorneys, U.S. marshals, and members of the staffs of those officials.

§ 16.12 Production prohibited unless approved by the Attorney General.

No employee or former employee of the Department of Justice shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department of Justice or disclose any information relating to material contained in the files of

the Department of Justice or disclose any information or produce any material acquired as a part of the performance of his official duties or because of his official status without the prior approval of the Attorney General.

§ 16.13 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Department of Justice for the production of material or the disclosure of information described in § 16.11, he shall immediately notify the Attorney General and the U.S. attorney for the district where the issuing court or other authority is located. The U.S. attorney shall immediately request instructions from the Attorney General. If possible, the Attorney General shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before the instructions from the Attorney General are received, the U.S. attorney or other attorney as may be designated for the purpose, shall appear with the employee or former employee of the Department upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Attorney General. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Attorney General.

§ 16.14 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 16.13(b) pending receipt of instructions from the Attorney General, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Attorney General not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (United States ex rel Touhy v. Ragen, 340 U.S. 462).

PART 21—WITNESS FEES

Sec.

- 21.1 Officers and employees of the United States summoned as witnesses.
- 21.2 Witnesses at administrative hearings.
- 21.3 Fees and allowances of witnesses in the District of Alaska.
- 21.4 Use of table of distances.
- 21.5 Certification of witness attendance.

§ 21.1 Officers and employees of the United States summoned as witnesses.

Officers and employees of the United States summoned as witnesses for the Government in cases before U.S. courts (including such courts in the possession of the United States) or U.S. magistrates shall be entitled (a) to necessary expenses incident to travel by common carrier, or, if travel is made by privately owned automobile, to mileage at the rate of 10 cents a mile, and (b) to a per diem allowance in lieu of subsistence at a rate of \$25 within the continental United States (the area of the former 48 States and the District of Columbia), and at the maximum rates prescribed by the President or his delegate pursuant to 5 U.S.C. 5702, outside the continental United States. Such allowances shall be paid in accordance with the provisions of the Standardized Government Travel Regulations.

[Order No. 424-70, 35 F.R. 883, Jan. 22, 1970]

§ 21.2 Witnesses at administrative hearings.

Whenever a department is authorized to hold hearings and to subpoena witnesses, the witnesses shall be entitled to the same fees and mileage, or expenses in the case of Government officers and employees, as provided by law for witnesses attending in the United States courts.

(5 U.S.C. 503; 28 U.S.C. 1823) [14 F.R. 6497, Oct. 25, 1949]

§ 21.3 Fees and allowances of witnesses in the District of Alaska.

The fees and allowances of witnesses in the District of Alaska shall be as follows:

(a) For attendance at the District Court or before any officer pursuant to law, including a commissioner acting in any capacity authorized by law, and for the time necessarily occupied in traveling from their place of residence to the place of trial or hearing and in returning therefrom, witnesses shall be entitled to \$24 a day.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

BIG BROTHER AIRCRAFT, INC.,
et al.

V.

JOHN VOLPE, et al.

CIVIL NO. 6322

MEMORANDUM IN OPPOSITION
TO INTERVENTION

The Government opposes the motions to intervene by WLAC-TV, Inc., and WSM, Inc., on the following grounds:

1. The Motions on their face lack merit in that the Petitions fail to meet the test of FED. R. CIV. P. 24(a) that the disposition of case in which they seek to intervene would impair or impede their ability to protect their interest.

The agreed Order entered by this Court October 8, 1971 expressly ordered the defendants to preserve the subject tapes in their original form subject to further orders of the Court. Hence, the very relief sought has already been granted, i.e., the tape recordings are to be preserved intact in the possession of the defendants.

2. The interventions would be premature in that the intervenors have failed to utilize the exclusive administrative procedure provided, which also are designed to provide the government agencies involved adequate time to consider the request, formulate a position, and take appropriate action.

The Public Information Act, 5 U.S.C. Section 552(a)(3), provides for judicial review only after the agency has withheld a record after proper request, viz., "in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedures to be followed."

The Court may take judicial notice of the procedure to be followed by the respective agencies which is specified as follows:

Federal Aviation Administration - 49 CODE FED. REGS. Section 7.

Section 7.45 requires coordination and agreement with another agency if the latter has the primary interest

Section 7.61(a) (2) exempts from disclosure "Information concerning any pending matter, including any claim ... to be resolved before a court of law, administrative board...."

Section 7.65 exempts investigative files "to preserve the position of the Government in litigation or potential litigation" subject to the usual rules of court discovery.

Section 7.71 specifies the procedure to be followed for reconsideration.

Section 7.83 specifies the fees payable.

Department of Justice (including F.B.I.) - 28 CODE FED. REGS.

Section 16.

Sections 16.1 through 16.4 describe the exclusive procedure whereby information may be obtained under the Public Information Act.

Section 16.5 discusses exemptions from the Act by reference to THE ATTORNEY GENERAL'S MEMORANDUM ON THE PUBLIC INFORMATION SECTION OF THE ADMINISTRATIVE PROCEDURE ACT (1967).

Notwithstanding the procedural defects of the intervenors action, the Public Information Act specifically exempts "investigatory files." 5 U.S.C. Section 552(b) (7).

Congressional intent was that this was intended to exempt "files prepared in connection with related Government Litigation" (THE ATTORNEY GENERAL'S MEMORANDUM, supra at pp. 37-38), since these statements "might contain information unfairly damaging to the litigant or other persons."

Any court proceedings under the Act are a trial de novo, and injunctive relief is based upon the usual equitable considerations, including the purpose and needs of the plaintiff, the burdens involved, and the importance to the public interest of the agency's reason for nondisclosure. See Hecht Co. v. Bowles, 321 U.S. 321 (1944); United States v. Reynolds, 345 U.S. 1 (1953).

Under the language of the statute, the agency is the only party defendant. [See THE ATTORNEY GENERAL'S (Ramsey Clark) MEMORANDUM ON THE PUBLIC INFORMATION SECTION OF THE ADMINISTRATIVE PROCEDURE ACT (1967), pp. 28-29.]

The statute contemplates a separate suit, after exhaustion of the administrative procedure, with the government having the usual 60 days after service of summons and complaint in which to answer. FED. R. CIV. P. 12(a).




CHARLES H. ANDERSON
United States Attorney

879 U. S. Court House
P. O. Box 800
Nashville, Tennessee 37202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon counsel of record for all parties at interest in this cause by placing same in the United States mail addressed to said counsel at his office.

This the 26th day of Oct. 1971


Assistant United States Attorney

discourage frivolous requests, especially for large quantities of records the production of which would uselessly occupy agency personnel to the detriment of the proper performance of other agency functions as well as its service in filling legitimate requests for records.

JUDICIAL REVIEW UNDER SUBSECTION (c)

"Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated shall have jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action. In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way."

Any person from whom an agency has withheld a record after proper request under subsection (c) may file a complaint in the appropriate United States district court. The agency then has the burden to justify the withholding, which it can satisfy by showing that the record comes within one of the nine exemptions in subsection (e).

While it is not the purpose of this memorandum to discuss the jurisdiction of the district courts or the procedures in such cases, it should be noted that most cases arising under subsection (c) will be handled by the General Litigation Section of the Civil Division of the Department of Justice. In those cases, upon receipt of a copy of the summons and complaint served upon the Attorney General and notification of its filing by the United States Attorney (see Rule 4, Federal Rules of Civil Procedure), the General Litigation Section will request the agency to furnish a litigation report.

Since subsection (c) provides that these cases should be given a priority on the court docket, the agency should similarly accord priority to the submission of its report in order that a timely response to the complaint may be filed, thus avoiding the necessity of requesting extensions of time.

Some agencies are authorized to conduct their own litigation. Where its authority permits, the agency may decide to handle its own cases under this act. In view of the general litigation responsibility which the Department of Justice has for all other departments and agencies in the executive branch, it is important that agencies handling their own litigation under this act keep the Department of Justice currently informed of their progress and forward to the Civil Division copies of significant documents which are filed in such cases.

The House report aptly describes the district court proceeding under subsection (c) as follows (H. Rept., 9):

"The proceedings are to be de novo so that the court can consider the propriety of the withholding instead of being restricted to judicial sanctioning of agency discretion. The court will have authority whenever it considers such action equitable and appropriate to enjoin the agency from withholding its records and to order the production of agency records improperly withheld. The burden of proof is placed upon the agency which is the only party able to justify the withholding. A private citizen cannot be asked to prove that an agency has withheld information improperly because he will not know the reasons for the agency action."

The injunction is an equitable remedy. As the above language recognizes, in a trial de novo under subsection (c) the district court is free to exercise the traditional discretion of a court of equity in determining whether or not the relief sought by the plaintiff should be granted. In making such determination the court can be expected to weigh the customary considerations as to whether an injunction or similar relief is equitable and appropriate, including the purposes and needs of the plaintiff, the burdens involved, and the importance to the public interest of the Government's reason for nondisclosure. See *Hecht Co. v. Bowles*, 321 U.S. 321 (1944); *United States v. Reynolds*, 345 U.S. 1 (1953); 2 POMEROY'S EQUITY JURISPRUDENCE §§ 397-404 (Symons 5th ed. 1941).

It should also be noted that district court review is designed to follow final action at the agency head level. The House report states that "if a request for information is denied by an agency subordinate the person making the request is entitled to prompt review by the head of the agency." (H. Rept., 9.) In reviewing this action, the district court is granted "jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant." Jurisdiction of a suit against agency officers, as distinguished from the agency itself, is not explicitly granted. The subsection also provides that "in the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt."

These provisions seem to assume the usual two-step procedure followed by courts of equity in contempt proceedings for violation of court orders. Following the statutory plan, the district court would presumably issue an order directed to the agency, which, under the language of the statute, is the only party defendant. In the event of noncompliance with the order—which would presumably have been served upon the head of the agency or whomever he delegated to make the final agency decision—the court would probably issue an

order to show cause directed to the responsible officer, which he would then have opportunity to answer. Subordinate officials who are not responsible for final agency action have a duty to follow the instructions of the agency head or his delegate and are probably not subject to the contempt provision. See *Touhy v. Ragen*; 340 U.S. 462 (1951).

SUBSECTION (d)—VOTING RECORDS OF AGENCY MEMBERS

"(d) AGENCY PROCEEDINGS.—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and such record shall be available for public inspection."

This subsection applies, of course, only to the votes of members of boards, commissions, etc., and not to agencies headed by a single administrator. Originally, the provision required that a public record be kept of all votes by agency members. After study, the Senate committee concluded that there might be "considerable disadvantage" in the disclosure of "preliminary votes." (S. Rept. 88th Cong., 7.) Therefore, the provision was revised to apply only to "final votes of multi-headed agencies in any regulatory or adjudicative proceeding." (H. Rept., 9.) Again, the exemptions of subsection (e) apply as well to this subsection as to the other subsections.

SUBSECTION (e)—EXEMPTIONS

"(e) EXEMPTIONS.—The provisions of this section shall not be applicable to matters that are * * *."

We have noted above that subsection (e), containing the exemptions, applies to all of the various publication and disclosure requirements of the new section 3. Adoption of this structure, rather than the tailoring of specific exemptions to each of the disclosure requirements contained in subsections (a), (b), (c), and (d), inevitably creates some problems of interpretation. An appropriate exemption from the Federal Register publication requirements of subsection (a) is not necessarily an appropriate reason for keeping secret a record requested under subsection (c). Exemption (2), for example, which relieves from all of the requirements of the act "matters that are * * * related solely to the internal personnel rules and practices of any agency," obviously is an appropriate exemption from the requirements of subsection (a) governing publication in the Federal Register. However, in the case of a request for access to a particular document under subsection (c), a strict, literal application of the language of exemption (2) frequently might produce incongruous results, shield-

porations and other organizations as well as individuals. The kinds of files referred to in this exemption, however, would normally involve the privacy of individuals rather than of business organizations.

Another possible area of invasion of privacy would be the furnishing of detailed information concerning Government employees or others. The House report (p. 6) notes that the Civil Service Commission has ruled that "the names, position titles, grades, salaries, and duty stations of Federal employees are public information." It seems reasonable to assume that the Congress regarded with approval the Commission ruling, which in a letter of March 17, 1966 addressed to the heads of Departments and agencies gives examples of the circumstances under which such information should be made available, and establishes guidelines to govern the discretion to disclose such information concerning Government employees. (See Cong. Rec., March 21, 1966, pp. A 1598-1599.) To assure the privacy sought to be protected by exemption (6), similar guidelines should apply to requests concerning lists of persons who are not Government employees. It should be noted that the Commission ruling referred to above does not authorize the release of employees' home addresses. Whether such addresses are protected by this exemption would depend upon the context in which they are sought.

(7) INVESTIGATIONS

"The provisions of this section shall not be applicable to matters that are * * * (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a private party;"

The House report emphasizes that the term "law enforcement" is used in exemption (7) in its broadest sense, to include the enforcement not only of criminal statutes, but rather of "all kinds of laws, labor and securities laws as well as criminal laws." (H. Rept., 11.) Thus, the files compiled from investigation by Government agents into charges of unfair labor practices would be exempt as investigatory files compiled for the purpose of enforcing the labor laws. Similarly, a file compiled by the Immigration and Naturalization Service in the investigation of an application by an alien for adjustment of status, or one compiled by the Securities and Exchange Commission concerning violation of securities regulations, would be exempt as investigatory files compiled for the purpose of enforcing the immigration and securities laws respectively.

Frequently the investigations which are made reflect violations of law or circumstances requiring redress by administrative proceedings, or litigation. The House report makes clear that in such cases the additional "files prepared in connection with related Government liti-

gation and adjudicative proceedings" are included within the exemption. (H. Rept., 11.)

It should be noted that the language "except to the extent available by law to a private party" is very different from the phrase, "which would not be available by law to a private party in litigation with the agency," used in exemption (5). The effect of exemption (5) is to make available to the general public those internal documents from agency files which are routinely available to litigants, unless some other exemption bars disclosure. The effect of the language in exemption (7), on the other hand, seems to be to confirm the availability to litigants of documents from investigatory files to the extent to which Congress and the courts have made them available to such litigants. For example, litigants who meet the burdens of the Jencks statute (18 U.S.C. 3500) may obtain prior statements given to an FBI agent or an SEC investigator by a witness who is testifying in a pending case; but since such statements might contain information unfairly damaging to the litigant or other persons, the new law, like the Jencks statute, does not permit the statement to be made available to the public. In addition, the House report makes clear that litigants are not to obtain special benefits from this provision, stating that "S. 1160 is not intended to give a private party indirectly any earlier or greater access to investigatory files than he would have directly in such litigation or proceedings." (H. Rept., 11.)

(8) INFORMATION CONCERNING FINANCIAL INSTITUTIONS

"The provisions of this section shall not be applicable to matters that are * * * (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions;"

The meaning and purpose of this exemption are obvious. It is "designed to insure the security and integrity of financial institutions, for the sensitive details collected by Government agencies which regulate these institutions could, if indiscriminately disclosed, cause great harm." (H. Rept., 11.)

An earlier version of exemption (4) protected trade secrets, but made no mention of financial information and would not have protected information developed by agency investigators and examiners, as distinguished from information "obtained from the public." Exemption (4) as enacted, however, covers commercial and financial information as set forth at pp. 32-34 above. Exemption (8) emphasizes the intention of the revision to protect information relating to financial institutions which may be prepared for or used by any agency responsible for the regulation or supervision of such institutions.

NR006 ME PLAIN

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

9:19 PM NITEL 11-1-71 DMB NOV 1 1971

TO DIRECTOR (164-2042) **TELETYPE**
JACKSONVILLE 164-103)
FROM MEMPHIS (164-76)

Mr. Tolson _____
Mr. Felt _____
Mr. Rosen _____
Mr. Mohr _____
Mr. Bishop _____
Mr. Miller, ES _____
Mr. Callahan _____
Mr. Casper _____
Mr. Conrad _____
Mr. DeLoach _____
Mr. Cleveland _____
Mr. Ponder _____
Mr. Bates _____
Mr. Tavel _____
Mr. Walters _____
Mr. Soyars _____
Tele. Room _____
Miss Holmes ^{b6} _____
Miss Gandy ^{b7C} _____

GEORGE MALLORY GIFFE, JR., AKA (DECEASED); [REDACTED]

[REDACTED] SUSAN LAKICH, AKA - VICTIM (DECEASED); BRENT

QUINTON DOWNS - VICTIM (DECEASED); [REDACTED]

VICTIM. CAA - HIJACKING, INTIMIDATION OF CREW MEMBERS,
CARRYING A CONCEALED WEAPON; KIDNAPING; FTCA. OO JK.

MEMPHIS DAILY SUMMARY, NOVEMBER ONE SEVENTYONE.

HEARING SCHEDULED FOR ONE THIRTY P. M. THIS DATE IN USDJL
UNTIL TEN A.M., NOVEMBER TWO NEXT PENDING ARRIVAL IN NASHVILLE
OF COPY OF ORDER ISSUED USDC, JACKSONVILLE, FLORDIA, THIS
DATE WHICH, ACCORDING TO USA, NASHVILLE, ENJOINS AGENTS AND
EMPLOYEES OF FBI AND FAA FROM MAKING ANY DISCLOSURE OF ANY
MATTER RELATING TO AIR PIRACY CASE, U.S. VERSUS [REDACTED]

[REDACTED] USA, NASHVILLE, STATED HE EXPECTS TO RECEIVE
COPY OF ORDER FROM JACKSONVILLE MORING OF NOVEMBER TWO NEXT
END PAGE ONE

REC-33

SI-106

2 NOV 4 1971

57 NOV 10 1971

164-2042-142

ME 163-76

PAGE TWO

AND IT WILL BE FURNISHED TO USDJ, NASHVILLE, FOR REVIEW PRIOR TO TEN A.M.

[REDACTED] FORMERLY EMPLOYED WHITE ENGINEERING COMPANY, NASHVILLE, NO LONGER IN BUSINESS, IN APPROXIMATELY MAY SIXTYEIGHT AS [REDACTED] NO RECORD OF TERMINATION DATE. DESCRIBED AS AVERAGE EMPLOYEE. NO INDICATION OF ANY CRIMINAL TRAITS.

b6
b7C

EMPLOYEE OF SUPER X DRUG STORE, NASHVILLE, RECALLS GIFFE PAYING OFF TWENTYFIVE DOLLAR INSUFFICIENT FUNDS CHECK ON OCTOBER THREE LAST, BUT NOTHING KNOWN PERSONALLY OF GIFFE.

[REDACTED] NASHVILLE, ASSOCIATE X OF GIFFE IN VERSTAND CORPORATION X AND GLOBAL V. REALTY COMPANY, NINETEEN SIXTYFOUR-SIXTYEIGHT, BOTH COMPANIES BEING UNSUCCESSFUL AND NO LONGER IN OPERATION. [REDACTED] TALKED WITH GIFFE AFTERNOON OF OCTOBER THREE LAST AT BAPTIST HOSPITAL BUT GIFFE MADE NO STATEMENT AS TO FUTURE PLANS. [REDACTED] NOT ACQUAINTED WITH

[REDACTED] GIFFE VISITED PATHOLOGIST LABORATORY, NASHVILLE, TO CONTACT FORMER STUDENT AT PEABODY COLLEGE, [REDACTED] WHO WAS NOT AVAILABLE FOR INTERVIEW THIS DATE.

END PAGE TWO

ME 164-76

PAGE THREE

THIS CASE IS RECEIVING PREFERRED AND CONTINUOUS
ATTENTION. P. END.

PLS HOLD FOR ONE MORE TT

REC-35 164-2042-1413

October 28, 1971

EX-115

b6
b7C

Honorable Jack Miller
United States Senate
Washington, D. C. 20510

My dear Senator:

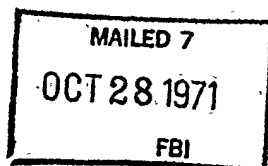
Your communication enclosing a copy of a letter from [redacted] of West Branch, Iowa, was received by this Bureau from the Department of Justice on October 22nd.

With respect to your constituent's comments regarding the hijacking of a private chartered flight to Jacksonville, Florida, on October 4th, you may wish to assure him that the FBI's primary consideration in all aircraft hijacking cases has been and will continue to be the well-being of all persons aboard.

This hijacking incident is currently the subject of actions in the courts, and for this reason I am unable to comment concerning the matter. As you requested, your enclosure is being returned.

Sincerely yours,

J. Edgar Hoover



Enclosure

- 1 - Omaha - Enclosures (2)
1 - Mr. M. A. Jones - Enclosures (2) (detached)

Tolson _____
Felt _____
Rosen _____
Mohr _____
Bishop _____
Miller, E.S. _____
Callahan _____
Casper _____
Conrad _____
Dalbey _____
Cleveland _____
Ponder _____
Bates _____
Tavel _____
Walters _____
Soyars _____
Tele. Room _____
Holmes _____
Gandy _____

NOTE: Senator Miller is on the Uniform Crime Reports bulletin mailing list and [redacted] is not identifiable in Bufiles.

JBT:jkm (7)

61 NOV 11 1971

MAIL ROOM ☐ TELETYPE UNIT ☐

W 7724

RS CMB
HSA

RJL
Jen

msk
LBY

TSB

Mr. Tolson ☒
 Mr. Felt ☒
 Mr. Rosen ☒
 Mr. Mohr ☒
 Mr. Bishop ☒
 Mr. Miller, E.S. ☒
 Mr. Callahan ☒
 Mr. Casper ☒
 Mr. Conrad ☒
 Mr. Dalbey ☒
 Mr. Cleveland ☒
 Mr. Ponder ☒
 Mr. Bates ☒
 Mr. Tavel ☒
 Mr. Walters ☒
 Mr. Soyars ☒
 Tele. Room ☒
 Miss Holmes ☒
 Miss Gandy ☒

United States Senate

October 13, 1971

Respectfully referred to
 Congressional Liaison
 FBI, Department of Justice
 9th and Constitution
 Washington, D.C. 20530

for such consideration as the communication
 herewith submitted may warrant, and for a report
 thereon, in duplicate to accompany return of
inclosure.

By direction of
 DEPUTY ATTORNEY GENERAL
 JACK MILLER
 FEDERAL BU. OF INV.

DEPARTMENT OF JUSTICE
 OCT 18 1971
 DEPUTY ATTORNEY GENERAL
 FEDERAL BU. OF INV.

NOV 3 1971

EX-115

REC-35

104-2042-143

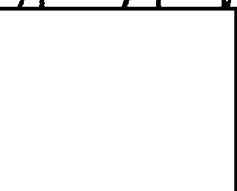
RK:jc

WUNJUM L

(R-Iowa)
 action (LCK)
 10-28-71
 BTI

EXP. PROC.
 ENCLOSURE
 OCT-22-1971

MAINFOLD



b6
b7C

8 JBT

dfw

GEORGE M. GIFFE JR

28

Oct 8 71 36586

RECEIVED.

[redacted]
West Branch, Iowa

b6
b7C

4 October, 1971

Senator Jack Miller
United States Senate
Washington, D.C.

Dear Senator Miller:

I am writing to ask that you look into and, hopefully, protest what appears to be a new (or perhaps, not-so-new) FBI policy regarding sky-jackings, a policy whereby the sky-jacker's apprehension takes precedence over the lives and safety of any others aboard the aircraft involved.

I am thinking specifically of the headlines in this afternoon's newspaper, wherein an apparently crazed man took his own life, as well as those of his wife and the pilot, upon finding himself surrounded by FBI agents in Jacksonville, Florida. FBI procedure of this sort is simply insane (and I speak as one who would like to see sky-jackings brought to an end); I simply can't believe that this is the way to go about it, guns blazing as though it were a scene out of the old Wild West (would you, Senator, have liked to have been aboard that airplane-- or better, suppose it to have been a United flight en route to or from Des Moines?).

The issue in question is of course, by extension, much larger than at first appears; it is not simply a matter of what the FBI is up to with respect to sky-jackers, but a matter, rather, of what the country is up to with respect to itself. For, if it is a commonplace that we are a violent nation long used to employing violent means to attain our ends, it is not such a commonplace also to observe that, more and more, we ourselves are becoming the dispensable means to those ends.

Yours truly

[redacted]

164-2042-143
ENCLOSURE

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

OCT 29 1971

TELETYPE

XNR004 ME PLAIN

9:01 PM NITEL 10-29-71 DMB

TO DIRECTOR

BALTIMORE

JACKSONVILLE

FROM MEMPHIS (164-76) (3P)

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, ES	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. DeLoach	_____
Mr. Mohr	_____
Mr. Ponder	_____
Mr. Bates	_____
Mr. Tavel	_____
Mr. Walters	_____
Mr. Soyars	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

GEORGE MALLORY GIFFE, JR., AKA (DECEASED);

SUSAN LAKICH GIFFE, AKA - (DECEASED); BRENT

QUINTON DOWNS - VICTIM (DECEASED); - VICTIM;

CAA - HIJACKING, INTIMIDATION OF CREW MEMBERS, CARRYING A CONCEALED
WEAPON; KIDNAPING; FTCA. OO JACKSONVILLE.

MEMPHIS DAILY SUMMARY, OCTOBER TWENTYNINE INSTANT.

LOCATED THIS DATE AT AMERICAN MARINE
AND EQUIPMENT COMPANY, NASHVILLE, STATED HE WAS CONTACTED BY

AN INDEPENDENT SALESMAN AND CONSULTANT FOR
DREDGING EQUIPMENT SOMETIME AGO, DATE UNRECALLED, RE A SAND AND
GRAVEL PROJECT IN GEORGIA. TOLD HIM HE WAS CONTACTED

BY ONE AND SUBJECT GIFFE TO PURCHASE NECESSARY

DREDGING EQUIPMENT FOR PROJECT IN GEORGIA. TOLD HIM

HE HAD NO FURTHER DETAILS RE PROJECT. NEVER MET SUBJECT

GIFFE OR NEVER CONVERSED WITH THEM; AND DID NOT ENGAGE IN

ANY BUSINESS ENTERPRISES WITH THEM AS NO FURTHER CONTACT WAS MADE

BY HIM WITH

END PAGE ONE

Gaffney
4
MH
6
3
Kofe

EX-112 REC-58 164-2042-14/4

16 NOV 3 1971

CC

ME 164-76

PAGE TWO

[] STATED [] COULD BE LOCATED AT EAST
COAST DREDGING COMPANY, OCEAN CITY, MARYLAND.

b6
b7C

BUREAU NOTE [] WAS PREVIOUSLY INTERVIEWED AND RESULTS
CONTAINED IN FIRST MEMPHIS REPORT.

FOR INFO BALTIMORE, INFO RECEIVED FROM [] FORMER
ASSOCIATE OF SUBJECT GIFFE, AND STATED []

[] INVOLVED IN MINING VENTURE AND THEY OWNED CONTROLLING
INTEREST IN AMERICAN MARINE AND MACHINE DREDGING COXMPANY, NASHVILLE.

CONTACT WITH USA'S OFFICE AND USDC CLERK'S OFFICE, MDT,
NASHVILLE, AT CLSOE OF BUSINESS DETERMINED NO FURTHER ACTIONS, ETC.,
FILED THIS DATE. USA'S OFFICE ADVISED ALL ANSWERS AND RESPONSES
HAVE BEEN FILED PRIOR TO ARGUMENTS AT HEARING NOVEMBER ONE NEXT
IN USDC, NASHVILLE. BUREAU WILL BE EXPEDITIOUSLY ADVISED RESULTS
OF THAT HEARING SET FOR ONE THIRTY PM, NOVEMBER ONE NEXT.

COPY OF MEMORANDA AND BRIEFS FILED USDC CLERK'S OFFICE
OCTOBER TWENTYEIGHT IN DICTATION AND TO BE FORWARDED TO BUREAU
AS SOON AS POSSIBLE.

SECOND MEMPHIS REPORT SENT TO MEMPHIS DIVIS~~X~~ION FROM NASHVILLE
END PAGE TWO

ME 164-76

PAGE THREE

RA THIS DATE AND WILL BE FORWARDED TO BUREAU AS SOON AS POSSIBLE.

b6
b7C

INVESTIGATION THIS DATE TO LOCATE [REDACTED] AND OTHER
ASSOCIATES SUBJECTS [REDACTED] AND GIFFE NEGATIVE.

BALTIMORE, OCEAN CITY, CONTACT [REDACTED] AT
EAST COAST DREDGING COMPANY. OBTAIN ALL INFORMATION HE HAS
RE ACTIVITIES AND ASSOCIATES OF SUBJECT GIFFE AND SUBJECT [REDACTED]
P. END.

PLB FBI WA

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

NOV 3 1971

TELETYPE

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, E.S.	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Cleveland	_____
Mr. Ponder	_____
Mr. Bates	_____
Mr. Tavel	_____
Mr. Walters	_____
Mr. Soyars	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

NR005 JK PLAIN

12:20PM URGENT 11/3/71 TLF

TO DIRECTOR (164-2042)

FROM JACKSONVILLE (164-103)

GEORGE MALLORY GIFFE, JR., AKA PAREN DECEASED PAREN; [REDACTED]

b6
b7C

[REDACTED] SUSAN LAKICH GIFFE, AKA DASH VICTIM PAREN DECEASED; BRENT
QUINTON DOWNS DASH VICTIM PAREN DECEASED PAREN; [REDACTED]

[REDACTED] DASH VICTIM, CAA DASH HIJACKING, INTIMIDATION OF CREW MEMBERS
CARRYING A CONCEALED WEAPON; KIDNAPPING; FTCA, OO: JK.

RE BUREAU TEL CALL TO JACKSONVILLE THIS DATE.

ON MORNING OF OCTOBER FOUR, LAST, THE FOLLOWING INDIVIDUALS
WERE IN CONTROL TOWER, JACKSONVILLE INTERNATIONAL AIRPORT WHEN AIR-
CRAFT IN THIS MATTER WAS ON GROUND: SPECIAL AGENTS [REDACTED]

SI-106

REC 20

164-2042-1415

ASSISTANT CHIEF, TRAFFIC CONTROL TOWER, FAA, JACKSONVILLE

NOV 4 1971

INTERNATIONAL AIRPORT; [REDACTED]

AIR TRAFFIC CONTROL SPECIALIST, FAA, AIR TRAFFIC CONTROL TOWER,
JACKSONVILLE INTERNATIONAL AIRPORT.

END PAGE ONE

THE ABOVE INDIVIDUALS WERE THE ONLY PERSONS PRESENT IN THE CONTROL TOWER DURING THIS INCIDENT AND IT IS TO BE FURTHER NOTED THAT SA [] WAS IN THE CONTROL TOWER PRIOR TO THE AIRCRAFT LANDING AND THEN LEFT TO JOIN ASAC [] AT THE ACTUAL SCENE WHERE THE AIRCRAFT WAS TO PARK AND DID NOT RETURN TO THE CONTROL TOWER UNTIL AFTER ALL OF THE ACTION AT THE AIRCRAFT HAD BEEN COMPLETED. [] REMAINED IN THE TOWER FOR ONLY A FEW MINUTES BEFORE LEAVING WITH SA [] TO RETURN TO THE CRIME SCENE. THE BUAGENTS IDENTIFIED ABOVE HAVE SUBMITTED SIGNED STATEMENTS TO INSPECTOR WASON CAMPBELL STATING THAT THEY DID NOT MAKE THE STATEMENT, QUOTE YOU CANT'T WIN 'EM ALL UNQUOTE, NOR DO THEY HAVE ANY KNOWLEDGE OF THIS STATEMENT BEING MADE.

b6
b7C

[] NOT ONLY DENIES MAKING OR HEARING THE ABOVE STATEMENT BUT COMPLETELY REPLAYED ORIGINAL TAPES IN PRESENCE OF BUAGENTS WITH NEGATIVE RESULTS TO THE LOCATION OF THIS STATEMENT ON THESE TAPES.

[] INTERVIEWED AND STATED HE DID NOT MAKE THIS STATEMENT NOR COULD HE RECALL ANY OF THE OTHER INDIVIDUALS IN TOWER AT THIS TIME MAKING SUCH STATEMENT. HE SAID THAT FIRST KNOWLEDGE HE HAD OF SUCH A STATEMENT WAS WHEN SUBSEQUENT ARTICLE APPEARED IN "WASHINGTON POST²

END

BJM FBI WASH DC

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

NOV 4 1971

TELETYPE

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, ES	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Cleveland	_____
Mr. P. L.	_____
Mr. T. L.	_____
Mr. Walters	_____
Mr. S. S.	b6
Tele. Room	b7C
Miss Holmes	_____
Miss Gandy	_____

NR004 JK PLAIN

3//238 PM URGENT 11-4-71 MHM

TO DIRECTOR (164-2042)

ATLANTA (164-241)

MEMPHIS (164-76)

OKLAHOMA CITY (164-54)

FROM JACKSONVILLE (164-103) 3P

GEORGE MALLORY GIFFE, JR., AKA. (DECEASED); ET AL, CAA - HIJACKING,
INTIMIDATION OF CREW MEMBERS, CARRYING A CONCEALED WEAPON; KIDNAPING;
FTCA, OO JK.

EX-104

JACKSONVILLE DAILY SUMMARY NOV. FOUR, SEVENTYONE.

RE ATLANTA TELETYPE NOV. FOUR INSTANT. REC-36

164-2042-146

USA'S OFFICE, JACKSONVILLE, ADVISED THIS DATE THAT CONTACTS
WITH JUSTICE DEPARTMENT, CRIMINAL DIVISION, LATE NOV. THREE LAST,
INDICATED THAT CRIMINAL DIVISION FEELS THAT CRIMINAL CASE IN THIS
MATTER WILL NOT BE COMPROMISED BY ACTION IN NASHVILLE COURT AND THAT
USA'S OFFICE CAN STILL PROTEST IN THAT COURT AND SHOULD THESE PROTESTS
FAIL, ADDITIONAL REMEDIES OF APPEAL ARE AVAILABLE THROUGH CIVIL
CHANNELS. USA'S OFFICE, JACKSONVILLE, NOT IN ACCORD WITH THIS
DECISION ALTHOUGH THEY MUST NECESSARILY COMPLY WITH DICTATES OF
CIVIL DIVISION, JUSTICE DEPARTMENT.

END PAGE ONE 120071 to

[Redacted Box]

Crim. Div.
Civil "

11/4/71

PAGE TWO

JK 164-103

ON THIS DATE, AUSA [REDACTED] JACKSONVILLE, CONTACTED FAA LEGAL COUNSEL [REDACTED] SOUTHERN REGION OFFICE, ATLANTA, AND ADVISED HIM THAT INTERCHANGE OF INFORMATION AND DOCUMENTS BETWEEN FEDERAL EMPLOYEES INVOLVED IN THE COLLECTING OF EVIDENCE AND INVESTIGATION IN THIS MATTER IS NOT PROHIBITED BY PARAGRAPH TWO OF USDJ TJOELAT'S RECENT COURT ORDER. [REDACTED] SAID THAT THE REPRODUCTION AND DISCLOSURE OF GOVERNMENT DOCUMENTS OR STATEMENTS BY ALL FEDERAL EMPLOYEES TO OUTSIDERS IS STRICTLY PROHIBITED BY THE ORDER.

b6
b7c

[REDACTED] ADVISED THAT BASED ON THE ABOVE, HE WOULD ADVISE [REDACTED] FAA, ATLANTA, OF THE ABOVE INTERPRETATION, THEREBY ALLOWING INFORMATION TO BE FURNISHED TO [REDACTED] FAA EMPLOYEE CONDUCTING EVALUATION OF AIRCRAFT POTENTIAL IN THIS MATTER.

USA'S OFFICE, JACKSONVILLE, STATED THAT POSSIBILITY EXISTS THAT JUDGE GRAY MAY ISSUE COURT ORDER LATE FRIDAY, NOV. FIVE, NEXT, RULING ON PETITIONS AND MOTIONS FILED BY PLAINTIFFS IN CIVIL ACTION CONCERNING DEPOSITIONS FROM GOVERNMENT PERSONNEL AND PRODUCTION OF DOCUMENTS.

IN VIEW OF THE FACT THAT SUCH AN ORDER COULD BE FILED LATE IN THE AFTERNOON, AND THE GOVERNMENT COULD BE PREVENTED FROM TAKING ADDITIONAL LEGAL ACTION PRIOR TO THE FOLLOWING MONDAY, PLAINTIFFS'

END PAGE TWO

PAGE THREE

JK 164-103

ATTORNEYS MAY ATTEMPT TO SOLICIT INFORMATION FROM GOVERNMENT EMPLOYEES
BASED ON SUCH AN ORDER.

USA'S OFFICE, JACKSONVILLE, HAS ALERTED FAA TO THIS POSSIBILITY
AND REQUESTED THAT ALL RECEIVING BUREAU OFFICES BE ADVISED OF THE
ABOVE POSSIBILITY. ALL EMPLOYEES SHOULD BE CAUTIONED THAT SHOULD ANY
INQUIRIES BE MADE BY PLAINTIFFS' ATTORNEYS, NEAREST USA'S OFFICE
SHOULD BE IMMEDIATELY CONTACTED AND NO INFORMATION GIVEN UNTIL MATTER
RESOLVED.

ALL RECEIVING BUREAU OFFICES WILL INSURE THAT ABOVE INFORMATION
BE PROMPTLY DISSEMINATED TO EMPLOYEES AND SHOULD SUCH INQUIRIES BE
MADE, BUREAU, USA'S OFFICE, AND JACKSONVILLE SHOULD BE IMMEDIATELY
ADVISED.

END

BJM FBI WASH DC

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

NOV 3 1971

TELETYPE

Mr. Tolson _____
Mr. Felt _____
Mr. Rosen _____
Mr. Mohr _____
Mr. Bishop _____
Mr. Miller, ES _____
Mr. Callahan _____
Mr. Casper _____
Mr. Conrad _____
Mr. Dalbey _____
Mr. Cleveland _____
Mr. Ponder _____
Mr. Bates _____
Mr. Tavel _____
Mr. Walters _____
Mr. Soyars _____
Tele. Room _____
Miss Holmes _____
Miss Gandy _____

NR007 NY PLAIN

350 AM NITEL 11-3-71 PJR

TO DIRECTOR

MEMPHIS 164-76

JACKSONVILLE 164-103

FROM NEW YORK 164-NEW

ALSO KNOWN AS CRIME ABOARD AIRCRAFT
GEORGE MALLORY GIFFE, JUNIOR, AKA (DECEASED); ET AL; GAA DASH
HIJACKING, INTIMIDATION OF CREW MEMBERS; CARRYING A CONCEALED WEAPON;
Federal Tort Claims Act
KIDNAPPING; ETC. OO JACKSONVILLE.
OFFICE OF ORIGIN

REFERENCE NEW ORLEANS TELETYPE TO NEW YORK, OCTOBER TWENTY NINE,
SEVENTY ONE.

[REDACTED] GERARD W. PURCELL ASSOCIATES, ONE FIVE ZERO
EAST FIFTY SECOND STREET, NEW YORK, NEW YORK, ADVISED NOVEMBER ONE,
SEVENTY ONE, THAT HE WAS FORMERLY [REDACTED] FOR AL HIRT
ENTERPRISES AND IN THIS CAPACITY HE WAS APPROACHED APPROXIMATELY
FOUR YEARS AGO BY ONE GEORGE MALLORY GIFFE, JUNIOR. [REDACTED] STATED
GIFFE WAS A PROMOTER TYPE WHO WAS, AT THAT TIME, [REDACTED]
PRESIDENT OF GLOBAL V REALTY COMPANY, A DIVISION OF VERSTAND

END PAGE ONE

6 NOV 4 1971

51 NOV 10 1971

NY 164-NEW

PAGE TWO

CORPORATION, SUITE SIX ZERO FIVE, ONE SEVEN TWO ZERO WEST END
BUILDING, NASHVILLE, TENNESSEE.

b6
b7C

GIFFE, UNDER THE NAME ATLANTIC DEVELOPMENT CORPORATION, (ADC),
ENTERED INTO AN AGREEMENT WITH [REDACTED] TO SET UP A NASHVILLE, TENNESSEE,
AL HIRT MARDI GRAS INTERNATIONAL INCORPORATED. THE PURPOSE OF LATTER
WAS TO ESTABLISH A CLUB DASH RESTAURANT UNDER AL HIRT'S NAME IN
NASHVILLE AND TO SUBSEQUENTLY SELL FRANCHISES FOR OTHER CLUBS FOR
TWENTY THOUSAND DOLLARS. ADC HAD THE EXACT SAME ADDRESS AS GLOBAL V
REALTY AND THE SAME OFFICERS. THESE OFFICERS, OTHER THAN GIFFE, WERE
[REDACTED] VICE PRESIDENT, AND [REDACTED] SECRETARY DASH
TREASURER. [REDACTED] RELATED THAT ONE [REDACTED] OF
CHARLY O'S RESTAURANT IN NASHVILLE, TENNESSEE, WAS ALSO INITIALLY
INVOLVED WITH GIFFE IN THIS ENTERPRISE, BUT EVENTUALLY SPLIT WITH HIM.
SUBSEQUENTLY, AL HIRT ENTERPRISES, THROUGH [REDACTED] PROMOTION, SET UP
A CONCERN NAMED AL HIRT SANDWICH SALONS. [REDACTED] HOME TELEPHONE
END PAGE TWO

NY 164-NEW

PAGE THREE

b6
b7C

NUMBER IS POSSIBLY [REDACTED]

[REDACTED] RELATED THAT AL HIRT MARDI GRAS INTERNATIONAL INCORPORATED NEVER GOT OFF THE GROUND AS GIFFE WAS UNABLE TO GET FINANCIAL BACKING.

AS AGREED, AL HIRT ENTERPRISES DID NOT INVEST ANY MONEY INTO THE PROJECT AND [REDACTED] STATED THAT, AFTER APPROXIMATELY TWO YEARS OF NOTHING HAPPENING, HE SENT A LETTER TO GIFFE TERMINATING THE AGREEMENT. TEMPORARY STOCK CERTIFICATES OF AL HIRT MARDI GRAS INTERNATIONAL INCORPORATED, DRAWN UP BY GIFFE'S ATTORNEY, [REDACTED]

[REDACTED] NASHVILLE, TENNESSEE, WERE ISSUED PENDING RECEIPT FROM A PRINTER OF PERMANENT CERTIFICATES.

[REDACTED] SAID HE RECEIVED IN HIS NAME SUCH A CERTIFICATE (NUMBER TWO) FOR SIX HUNDRED TWENTY THOUSAND SHARES, TEN CENTS PAR VALUE. HE STATED THAT HIS FILES REFLECT THAT ONE [REDACTED] OF NASHVILLE, TENNESSEE, ALSO RECEIVED SIMILAR SHARES OF STOCK. [REDACTED]

FURTHER RELATED THAT SCHLOTT, NORMAN AND CAIN ARCHITECTS (ADDRESS UNKNOWN) WERE ALSO INVOLVED IN THE ABORTIVE ENTERPRISE. [REDACTED]

END PAGE THREE

NY 164-NEW

PAGE FOUR

[REDACTED] THIRD NATIONAL BANK, (LIKELY
NASHVILLE) MAY HAVE ALSO BEEN CONTACTED BY GIFFE.

b6
b7C

[REDACTED] RELATED THAT AFTER SENDING HIS LETTER OF TERMINATION
OF AGREEMENT TO GIFFE, HE NEVER HEARD FROM HIM AGAIN UNTIL
APPROXIMATELY TWO WEEKS BEFORE HIS DEATH. [REDACTED] STATED THAT GIFFE,
KNOWING THAT HE WAS SINGER [REDACTED] BUSINESS MANAGER, TELEPHON-
ICALLY CONTACTED HIM TO INTEREST HIM IN LARGE TRACTS OF LAND WHICH
HAVE A TYPE OF SAND USED FOR CONSTRUCTION IN THE SOUTH. GIFFE
SUPPOSEDLY HAD OPTIONS ON THIS LAND, BUT NO FINANCIAL BACKERS. [REDACTED]
TOLD GIFFE HE WAS NOT INTERESTED AND THEREFORE HE DID NOT PRESS GIFFE
FOR DETAILS CONCERNING THE DEAL. HE ADVISED THAT WHEN HE FIRST MET
GIFFE, HE WAS MARRIED BUT THEN DIVORCED HIS WIFE AND MARRIED A YOUNG
NEW SECRETARY HE HAD JUST HIRED. [REDACTED] RELATED IT WAS THIS SECOND
WIFE THAT DIED IN THE JACKSONVILLE INCIDENT. [REDACTED] CHARACTERIZED
GIFFE AS AN OUTGOING, PERSONABLE INDIVIDUAL, PERHAPS A BIT "BLOWY." HE
SAID HE NEVER HAD ANY SOCIAL RELATIONSHIP WITH GIFFE AND IS UNABLE TO
SPECULATE AS TO REASON FOR JACKSONVILLE INCIDENT.

END PAGE FOUR

NY 164-NEW

PAGE FIVE

UNLESS ADVISED TO THE CONTRARY BY BUREAU

UACB, BY OFFICE OF ORIGIN, MEMPHIS AT NASHVILLE, ATTEMPT TO
LOCATE AND INTERVIEW [REDACTED]

b6
b7C

APPROPRIATE REPRESENTATIVES OF SCHLOTT, NORMAN AND CAIN ARCHITECTS
AND [REDACTED] REGARDING THEIR ASSOCIATION WITH GIFFE AND AL HIRT
MARDI GRAS INTERNATIONAL INCORPORATED.

THREE ZERO TWO FOLLOWS.

PENDING.

END.

WJM FBI WA

NR007 AX PLAIN

545 PM NITEL 11-1-71 VCM

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

TO DIRECTOR

NOV 1 1971

JACKSONVILLE

TELETYPE

FROM ALEXANDRIA (164-69)

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, ES	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Cleveland	_____
Mr. Ponder	_____
Mr. Bates	_____
Mr. Tavel	_____
Mr. Walters	_____
Mr. Soyars	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

GEORGE MALLORY GIFFE, JR., (DECEASED); [REDACTED]
MRS. GEORGE M. GIFFE, JR., AKA - VICTIM (DECEASED); BRENT DOWNS
VICTIM (DECEASED); [REDACTED] - VICTIM; CAA - HIJACKING;
KIDNAPING; FTCA; OO: JACKSONVILLE.

RE WFO TELETYPE TO BUREAU, OCT. TWENTYSEVEN, LAST.

INVESTIGATION AT PENTAGON ON NOV. ONE, INSTANT, REVEALED THAT

[REDACTED] U. S. AIR FORCE, IS CURRENTLY IN EUROPE,
AND IS TENTATIVELY DUE BACK AT WORK ON NOV. THREE, NEXT.

ALEXANDRIA WILL CONTACT [REDACTED] UPON HIS RETURN ON NOV. THREE,
NEXT, AND INTERVIEW HIM REFERENCE HIS ASSOCIATION WITH AND KNOW-
LEDGE OF SUBJECT, GIFFE. P.

END

REW FBI WASH DC

ST-106

REC-30

164 - 2042 - 148

2. NOV 4 1971

57 NOV 10 1971

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Bishop

DATE: 11-2-71

FROM : G. E. Malmfeldt *gem*

SUBJECT: *re*

HAWTHORNE, CALIFORNIA

GEORGE M. GIFFE

The purpose of this memorandum is to recommend that the letter from [redacted] to the President which was referred to this Bureau and received October 28th not be acknowledged.

Correspondent describes the behavior of the FBI in the hijacking of the plane of Brent Q. Downs as "obscene" indicating our actions showed "a profound lack of respect for human life."

Correspondent not identifiable in Bufiles.

Since this hijacking incident is currently a matter of litigation, it would be inadvisable to attempt to correct [redacted] rash judgment by informing him of the facts. *t*

RECOMMENDATION:

That [redacted] letter to President Nixon not be acknowledged.

1 - Mr. Malmfeldt

TEB/LFR
RECEIVED FBI
JJH:sel (2)
8-33 PM, 11
pel

164-2042-1419
REC-30
1
1ST-103

NOV 5 1971

61 NOV 11 1971 *FBI*

file
8/9

JJH

Tolson _____
Felt _____
Rosen _____
Mohr _____
Bishop _____
Miller, E.S. _____
Callahan _____
Casper _____
Conrad _____
Dalbey _____
Cleveland _____
Ponder _____
Bates _____
Tavel _____
Walters _____
Soyars _____
Tele. Room _____ b6
Holmes _____ b7C
Gandy _____

Mr. Tolson ☒
 Mr. Felt ☒
 Mr. Rosen ☒
 Mr. Mohr ☒
 Mr. Bishop ☒
 Mr. Miller, E.S. ☒
 Mr. Callahan ☒
 Mr. Casper ☒
 Mr. Conrad ☒
 Mr. Dalbey ☒
 Mr. Cleveland ☒
 Mr. Ponder ☒
 Mr. Bates ☒
 Mr. Tavel ☒
 Mr. Walters ☒
 Mr. Soyars ☒
 Tele. Room ☒
 Miss Holmes ☒
 Miss Gandy ☒ b6 b7C

(10-28-71)

Dear President Nixon,

I think the behavior of the FBI in the hijacking of plane of Brent Q Downs can only be described as obscene, allowing two innocent lives to be lost for want of fuel demanded by the hijacker is pure bull headedness, & shows a profound lack of respect for human life. I protest! & I think you should too.

Sincerely

[Redacted Signature]

Hawthorne, California 90250)

[Redacted Address]

copy:rl

*Nalmfeldt/Bishop no ack memo
 11-2-71
 JFH:zel*

8/JFH

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, ES	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Cleveland	_____
Mr. Ponder	_____
Mr. Bates	_____
Mr. Tavel	_____
Mr. Walters	_____
Mr. Soyars	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

b6
b7C

FEDERAL BUREAU OF INVESTIGATION

HAWTHORNE, CALIFORNIA 90250
TELEPHONE [redacted]

Justice

g

copy

Dear President Nixon,

I think The behavior of
The FBI in The hijacking
of plane of Bent Q Downs
can only be described as obscene.
Allowing two innocent lives
to be lost for want of fuel
demanded by the hijacker is
pure bullheadedness, & shows
a profound lack of respect for
human life. I protest! & I
think you should too.

Sincerely

GEORGE M.

GIFTE

EXP. PROC. 31
164-2042-150
11-5
OCT 28 1971

NOV 11 1971
11-2-71
JSH: cel

SI-103

6 DIRECTOR

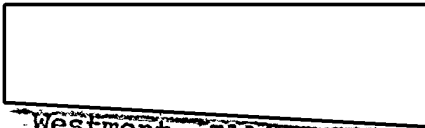
CORRESPONDENCE

November 3, 1971

115

REC-30

164-2042-151



Westmont, Illinois 60559

b6
b7C

Dear



I readily understand the reasons which prompted your letter of October 28th and, while I would like to respond to the points you raised, the matter involving the hijacking of a chartered aircraft to Jacksonville, Florida, on October 4th is currently the subject of court action. On November 1st U. S. District Judge Gerald B. Tjoflat, Middle District of Florida, Jacksonville, Florida, issued an order prohibiting all Government Agents and employees, including the FBI, from making any statements regarding the events set out in and surrounding the criminal indictment in this case to any persons not associated with the Federal Government.

MAILED 11
NOV 3 - 1971
FBI

Sincerely yours,

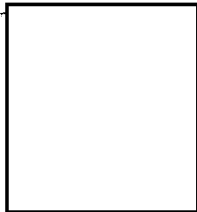
J. Edgar Hoover

NOTE: One [redacted] age 11, with a Lombard, Illinois, address received a small photo of the Director and reprint material in 1960.

JBT:djq (3)

- Tolson
- Felt
- Rosen
- Mohr
- Bishop
- Miller, E.S.
- Callahan
- Casper
- Conrad
- Dalbey
- Cleveland
- Ponder
- Bates
- Tavel
- Walters
- Soyars
- Tele. Room
- Holmes
- Gandy

6 NOV 9 1971



MAIL ROOM ☐ TELETYPE UNIT ☐

Handwritten signatures and initials:
TEB/AFB
Jen
MSR
JBT

Westmont, Illinois 60559

October 28, 1971

J. Edgar Hoover, Director
Federal Bureau of Investigation
Washington, D. C.

Dear Mr. Hoover:

George M. Giffe, Jr.

Two events in the news recently have disturbed me greatly. The Attica Prison deaths and the death of Brent Q. Downs, pilot of the airliner hijacked in Nashville, Tenn., seem to indicate a change in the thinking of law enforcement agencies in our country.

It appears that the value of the lives of innocent human beings has decreased in the minds of many law enforcement officers. Previously, an innocent man caught in circumstances similar to those mentioned above was given every protection available. He was brought to safety before any action which might be potentially dangerous to him was taken. Presently, apprehending the criminal seems to be given a higher priority than protecting the lives he may be threatening.

Can a man no longer work in correctional institutions with an assurance that his life is to be protected as it used to be? Can we no longer travel by air without fear that, if hijacked, our lives may be sacrificed by an F.B.I. decision to protect property and apprehend the hijacker at any cost? Does a fireman put out the fire before saving the people trapped in the building? I believe that laws are for the protection of the innocent. Is it not strange that law enforcement agencies are more concerned with apprehending the guilty than with protecting the innocent?

I ask that you re-evaluate the position that the F.B.I. and other agencies have taken in sacrificing innocent lives to catch criminals. Perhaps, it is easy to value human life less when one is so close to law enforcement seeing murder routinely. Please do not let this happen. The worth of a man cannot be measured in terms of apprehending a criminal or the property that will be saved by doing so. Each of us is lessened by every such senseless sacrifice. Please keep in mind that your first duty is not to apprehend the guilty but to protect the innocent.

Sincerely in humanity,

Mr. Tolson
Mr. Felt
Mr. Rosen
Mr. Mohr
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Dalbey
Mr. Cleveland
Mr. Ponder
Mr. Tavel
Mr. Walters
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

Marfeldt

EXP. PROC. 37
NOV 1 1971

EX 115

REC-30

64-2042-

151

9 NOV 1 1971

CORRESPONDENT

*ack/nml
11-3-71
JBT:ljg*

NR040 ME PLAIN

8:18 PM NITEL 11-4-71 DMB

TO DIRECTOR (164-2402)

JACKSONVILLE (164-103)

FROM MEMPHIS (164-76)

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

NOV 4 1971

TELETYPE

Mr. Tolson _____
Mr. Felt _____
Mr. Rosen _____
Mr. Mohr _____
Mr. Bishop _____
Mr. Miller, ES _____
Mr. Callahan _____
Mr. Casper _____
Mr. Conrad _____
Mr. Dalbey _____
Mr. Cleveland _____
Mr. Ponder _____
Mr. Bates _____
Mr. Tavel _____
Mr. Walters _____
Mr. Sars _____ b6
Tele. Room _____ b7C
Miss Holmes _____
Miss Gandy _____

GEORGE MALLORY GIFFE, JUNIOR, AKA (DECEASED);
ET AL; CAA DASH HIJACKING, INTIMIDATION OF CREW MEMBERS;
CARRYING A CONCEALED WEAPON; KIDNAPING; FTCA. OO: JACKSONVILLE.

RE MEMPHIS TELETYPE NOVEMBER THREE, LAST.

[REDACTED] ADVISED [REDACTED] IS POSSIBLY [REDACTED]

A FRIEND OF MRS. GIFFE, SR. SHE ADDED GIFFE, HR. SPOKE
OF ONE [REDACTED] ATTORNEY AT CHARRANOOGA, WHO
OWNED A LEAR JET, BUT SHE EXPRESSED BELIEF THIS PERSON
FICTITIOUS AS GIFFE HAD SO INFORMED HIS WIFE, SUSAN.

[REDACTED] ADDED THAT [REDACTED] POSSIBLY WAS [REDACTED]

[REDACTED] WHOSE NAME APPEARS ON FINANCIAL STATEMENT OF [REDACTED]

[REDACTED] FOUND IN GIFFE'S PERSONAL PAPERS. [REDACTED]

INFORMED THAT APPROXIMATELY SEVEN WEEKS AGO SHE AND SUSAN
WERE IN GIFFE'S APARTMENT WHEN GIFFE REQUESTED THEM TO
LEAVE AS HE WAS HAVING A MEETING IN THE APARTMENT.

END PAGE ONE

REC-30/64-2042-152

EX-115

3 NOV 5 1971

61 NOV 9 1971

ME 164-76

PAGE TWO

b6
b7C

[REDACTED] AND SUSAN RETURNED SOMETIME LATER AND NOTICED
FOUR USED COFFEE CUPS. GIFFE IN CONVERSATION MENTIONED
[REDACTED] (PHONETIC) AS ONE OF THE INDIVIDUALS AT THE
MEETING AND THAT [REDACTED] WAS INVOLVED IN THE FINANCIAL
BUSINESS IN NEW YORK. NO OTHER INFORMATION AVAILABLE
ON [REDACTED] ADVISED GIFFE WAS VERY UPSET IN
RECENT WEEKS OVER BUSINESS FAILURES AND WAS A PERSON WITH
TWO PERSONALITIES. HE COULD BE PERSONABLE, KIND AND
GRACIOUS AT ONE TIME AND THEN OUTRAGEOUS AND DANGEROUS
AT OTHER TIMES. SHE STATED GIFFE BELIEVED IN WITHCHCRAFT
AND MADE A STATEMENT RECENTLY TO THE EFFECT THAT HE HAD
"BEEN HERE TOO LONG" BUT SHORT TIME LATER STATED HE WOULD
SEND HER A POSTCARD FORM AROUND THE WORLD.

[REDACTED] TALKED WITH GIFFE ON OCTOBER THREE, LAST,
ON TELEPHONE AT WHICH TIME GIFFE STATED HE WANTED TO TELL
SUSAN GOODBY AND GIVE HER SOME MONEY AND PLANNED TO
MEET HER AT THE KING OF THE ROAD MOTEL IN NASHVILLE ON
OCTOBER THREE, LAST. GIFFE ALSO INFORMED [REDACTED]
END PAGE TWO

PAGE THREE

THAT HE WANTED TO GET SOME THINGS STRAIGHTENED OUT AND WOULD BE OUT OF HER LIFE. [REDACTED] INFORMED GIFFE SHE AND HER HUSBAND WOULD BE AT THE KING OF THE ROAD MOTEL WHEN GIFFE MET SUSAN, BUT AFTER [REDACTED] TALKED WITH SUSAN AND AT SUSAN'S REQUEST, SHE AND [REDACTED] DID NOT GO TO THE MOTEL.

b6
b7C

GIFFE RECEIVED A BS DEGREE /AUGUST, NINETEEN SIXTYTWO, AND MA DEGREE IN BIOLOGY FROM PEABODY COLLEGE, NASHVILLE, TENN. EMPLOYED AS INSTRUCTOR IN BIOLOGY AT PEABODY COLLEGE FALL ON NINETEEN SIXTYTHREE TO SPRING OF NINETEEN SIXTYFIVE ON TEMPORARY BASIS, BUT WAS NOT RE-EMPLOYED AS HE WAS NOT CONSIDERED AS A QUALIFIED INSTRUCTOR.

[REDACTED] EMPLOYEE OF PATHOLOGIST LABORATORY, NASHVILLE, TENNESSEE, ADVISED HE WAS STUDENT OF GIFFE AT PEABODY COLLEGE AND GIFFE OCCASIONALLY VISITED HIM AT HIS EMPLOYMENT, BUT NOT CLOSE ASSOCIATE. [REDACTED] KNOWS NOTHING OF GIFFE'S PERSONAL LIFE OR BUSINESS ACTIVITIES.

END PAGE THREE

ME 164-76

PAGE FOUR

THIS CASE RECEIVING CONTINUOUS INVESTIGATION.

P. END.

PLS HOLD FOR ONE MORE TT TU

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

NQV 2 1971

TELETYPE

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, ES	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Cleveland	_____
Mr. Ladd	_____
Mr. Rasmussen	_____
Mr. Tavel	_____
Mr. Walters	b6
Mr. Soyars	b7C
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

NR006 ME PLAIN

8:53 PM NITEL 11-2-71 DMB

TO DIRECTOR

JACKSONVILLE (164-103)

FROM MEMPHIS (164-76)

ALSO KNOWN AS

GEORGE MALLORY GIFFE, JR., AKA (DECEASED);

SUSAN LAKICH GIFFE, AKA - VICTIM (DECEASED); BRENT

QUINTON DOWNS - VICTIM (DECEASED);

CRIME ABOARD AIRCRAFT

VICTIM. CAA - HIJACKING, INTIMIDATION OF CREW MEMBERS,

CARRYING CONCEALED WEAPON ABOARD AIRCRAFT; KIDNAPING; Federal Tort Claims Act
OFFICE OF ORIGIN

OO: JACKSONVILLE.

REFERENCE

Teletype

RE MEMPHIS TEL THIS DATE.

U. S. DISTRICT COURT

RE TELETYPE SETS FORTH RESULTS OF COURT ACTION, USDC,

NASHVILLE.

PRESENTLY HAVE CHECKING

ACCOUNT AT

WITH BALANCE OF

NO ACTIVITY

IN RECENT MONTHS AND NO RECORD OF

APPLYING FOR LOANS. NOV 4 1971

INQUIRY IN VICINITY OF RESIDENCE OF

DISCLOSES

WELL REGARDED

AND NEIGHBORS EXPRESSED SURPRISE AT HIS ARREST. INVESTIGATION

END PAGE ONE NOV 10 1971

ME 164-76

PAGE TWO

TO LOCATE [REDACTED] NASHVILLE, TENNESSEE, NEGATIVE

TO DATE. [REDACTED] NO LONGER RESIDES ON [REDACTED]

LAST KNOWN ADDRESS. ATTORNEYS [REDACTED]

b6
b7C

[REDACTED] NASHVILLE, INTERVIEWED AND FURNISHED SUBSTANTIALLY
SAME INFORMATION. BOTH STATE THEIR OFFICE HAS HAD BUSINESS
DEALINGS IN PAST INVOLVING GIFFE AND [REDACTED] CURRENTLY
REPRESENTING GIFFE IN PENDING LITIGATION INVOLVING ~~LAW SUIT~~
IN DAVIDSON/ COUNTY, TENNESSEE, WHEREIN GIFFE SUING FOR
ONE HUNDRED THOUSAND DOLLARS PERSONAL INJURY DAMAGE IN
CONNECTION WITH AUTO ACCIDENT. THIS MATTER ALMOST SETTLED
BY AGREEMENT JUST PRIOR TO GIFFE'S DEATH. IN APPROXIMATELY
NINETEEN SIXTYEIGHT, GIFFE ACTIVELY ATTEMPTED TO PROMOTE
AL HIRT - MARDI GRAS INTERNATIONAL, A FRANCHISING FIRM BUILT
ON THE NAME AND REPUTATION OF ENTERTAINER AL HIRT, WITH
CONCEPT OF COMBINATION LUXUARY TYPE RESTAURANT AND NIGHT
CLUB. [REDACTED] CAME TO NASHVILLE TO DISCUSS BUSINESS BUT ARRANGE-
MENTS WERE NEVER COMPLETED. THEREAFTER GIFFE CAME TO LAW

END PAGE TWO

ME 164-76

PAGE THREE

b6
b7C

FIRM OF [REDACTED] WITH IDEA OF EXTRACTING SAND
AND GRAVEL ON LAND HOLDINGS IN GEORGIA WHERE HE HELD
OPTION AND MINERAL RIGHTS. GIFF'S PROPOSAL HAD MERIT
BECAUSE OF IMPENDING INTERSTATE HIGHWAY CONSTRUCTION IN
GEORGIA. LAW FIRM DREW INCORPORATION PAPERS AND FILED SAME
WITH TENNESSEE SECRETARY OF STATE UNDER NAME CADE, INC. WITH
PRINCIPALS AS GIFFE, GEORGE DUGGER, ELIZABETH TON, TENNESSEE,
[REDACTED] BOTH OF CLEVELAND, TENNESSEE.

[REDACTED] MALE NEGRO OF NASHVILLE, TENNESSEE, HAD SOME
CONNECTION WITH THIS OPERATION AND APPARENTLY BROUGHT GIFFE
INTO THE PROPOSED OPERATION. [REDACTED] TAX ATTORNEY
@WASHINGTON, D.C. CADE
IN WASHINGTON, D.C. WAS INVOLVED IN CADE AND [REDACTED] ADVISED

[REDACTED] HE HAD BEEN INTERVIEWED BY FBI. [REDACTED] HAD STOCK
IN CONSOLIDATED GOLD AND MINING CORPORATION WHICH HELD MINERAL
RIGHTS ON FIVE HUNDRED ACRES IN GEORGIA. AGREEMENT
CADE, INC. TO PAY [REDACTED] FIFTEEN THOUSAND DOLLARS CASH AND
THEREAFTER ROYALTIES WITH MINING OPERATION TO BEGIN IN SIX
END PAGE THREE

~~CORRECTION LINE ELEVEN FIFTH AND SIXTH WORD~~ [REDACTED]

~~LINE FIFTEEN EIGHTH WORD AGREEMENT~~

ME 164-76

PAGE FOUR

MONTHS. GIFFE, DESCRIBED BY ATTORNEYS AS AN EXTREMELY
POOR BUSINESSMAN, WAS UNABLE TO OBTAIN NECESSARY FINANCING
AND ARRANGEMENTS NEVER MATERIALIZED ALTHOUGH CADE STILL
CHARTERED IN ~~TENNESSEE~~ ^{TENNESSEE} GIFFE IMPRESSED [REDACTED]
AS EXTREMELY DEVOTED TO WIFE AND BOTH EXPRESSED SURPRISE
AT HER DEATH AT HANDS OF GIFFE. GIFFE DID APPEAR AT LAW
OFFICE ON ONE OCCASION WITH GUN IN POSSESSION BUT [REDACTED]
MADE HIM REMOVE THE GUN WHILE IN THE OFFICE. GIFFE VISITED
LAW FIRM ON NUMEROUS OCCASIONS WITH UNRECALLED PERSONS IN
AN APPARENT EFFORT TO IMPRESS [REDACTED] GIFFE
ALSO BROUGHT [REDACTED] BY OFFICE AND ATTEMPTED TO OBTAIN HELP
IN OPENING NIGHT CLUB IN NASHVILLE TOGETHER WITH [REDACTED]
[REDACTED] RECORDS NASHVILLE - DAVIDSON COUNTY METRO BEER
BOARD DISCLOSE THAT ON JULY TWENTY EIGHT, NINETEEN SEVENTYONE
[REDACTED] AND PARTNER [REDACTED] GRANTED BEER LICENSE
AT LABRI LOUNGE, NASHVILLE, AND LICENSE STILL VALID. NO
RECORD GIFFE OR [REDACTED] LOCATED AT BEER BOARD
END PAGE ~~FOUR~~ FOUR

b6
b7C

ME 164-76

PAGE FIVE

AND ATTORNEY [] STATED HE KNEW [] BUT THAT HE
LEFT NASHVILLE ABOUT TWO OR THREE YEARS AGO AND RESIDING
AT AN UNKNOWN LOCATION IN THE STATE OF CALIFORNIA.

b6
b7C

THIS CASE RECEIVING CONTINUOUS ATTENTION.

P. END.

~~PLS HOLD FOR ONE MORE TT TU~~

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

NOV 3 1971

TELETYPE

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, ES	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Cleveland	_____
Mr. Ponder	_____
Mr. Bates	_____
Mr. Tavel	_____
Mr. Walters	_____
Mr. Soyars	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

NR011 ME PLAIN

10:12PM NITEL 11-3-71 DMB

TO DIRECTOR (164-2402)

JACKSONVILLE (164-103)

FROM MEMPHIS (164-76)

GEORGE MALLORY GIFFE, JR. (DECEASED); ET AL; BRENT
ALSO KNOWN AS CRIME ABOARD AIRCRAFT
QUINTON DOWNS, AKA - VICTIM (DECEASED); ET AL; GCA
HIJACKING; INTIMIDATION OF CREW MEMBERS; CARRYING A
Federal Tort Claims Act
CONCEALED WEAPON; KIDNAPING; FTCA. OO: JACKSONVILLE.
OFFICE OF ORIGIN

b6
b7c

REFERENCE November
RE MEMPHIS NITEL, NOV. TWO, LAST.
COPY OF COURT ORDER SIGNED BY U. S. DISTRICT JUDGE
USDJ, FRANK GRAY, JR.

THIS DATE FURNISHED BUREAU AND JACKSONVILLE BY TELECOPIES,
NOV. THREE, INSTANT.

[REDACTED] Tennessee
NASHVILLE, TENN., ADVISED SHE OBSERVED
October
GIFFE ON OCT. THREE, LAST, AT WHICH TIME HE APPEARED TO
HER TO BE UPSET AND "NOT HIMSELF." GIFFE ADVISED [REDACTED]
HE HAD ARRANGED TO FINANCE CADE, INC. AND WAS GOING TO
ATLANTA TO OBTAIN CURRENCY. RECORDS OF CIRCUIT COURT,
NASHVILLE, DISCLOSED GIFFE FILED DAMAGE SUIT FOR ONE HUNDRED
THOUSAND DOLLARS AGAINST [REDACTED] ON JULY FOURTEEN
LAST AS RESULTS OF AUTOMOBILE ACCIDENT JULY SIXTEEN, SEVENTY
END PAGE ONE

NOV - 01573

13 NOV 4 1971

feh

ME 164-76

PAGE TWO

IN WHICH GIFFE ALLEGED SUSTAINED DISABLING INJURIES. CASE
REMAINS IN PENDING STATUS ON COURT DOCKET. EMPLOYEE OF
MAGNAVOX COMPANY, NASHVILLE, ADVISED [REDACTED] UNKNOWN AND
BUSINESS CARD OF COMPANY IN HIS POSSESSION POSSIBLY GIVEN
OUT BY UNKNOWN SALESMAN, [REDACTED] HULSE DISTRIBUTING
Company
CO., NASHVILLE, ADVISED [REDACTED] WAS CUSTOMER FOR BEER SALES
AS PART OWNER OF LA BRI LOUNGE, NASHVILLE. GIFFE UNKNOWN TO

b6
b7C

[REDACTED]
[REDACTED] SALESMAN, HULSE DISTRIBUTING CO., STATES
HE FURNISHED BUSINESS CARD TO [REDACTED]
PARTNERS IN LA BRI LOUNGE, AND PRESENTLY HOLDS INSUFFICIENT
FUNDS CHECK FOR TWO HUNDRED DOLLARS ISSUED BY LOUNGE.

[REDACTED] NOT ACQUAINTED WITH GIFFE.

EMPLOYEE OF A&C DISTRIBUTING CO., BEER DISTRIBUTORS
IN NASHVILLE STATES LA BRI LOUNGE IS COMPANY CUSTOMER BUT
HAS NO PERSONAL KNOWLEDGE OF [REDACTED] OR GIFFE.

[REDACTED] REAL ESTATE DEALER, NASHVILLE, HANDLED
RENTAL OF LA BRI LOUNGE FOR [REDACTED] BUT NOT

PAGE TWO

ME 164-76

PAGE THREE

ACQUAINTED WITH GIFFE. RECORDS OF HARVEY'S DEPARTMENT
STORE, NASHVILLE, DISCLOSED [REDACTED] OPENED
ACCOUNT IN MADISON SQUARE STORE, ^{August} ~~AUG~~. NINETEEN SIXTYTWO,
WHICH ACCOUNT WAS CLOSED APRIL, SEVENTY. NO INFORMATION
OF VALUE IN THIS INVESTIGATION CONTAINED IN FILE OF HARVEY'S
DEPTARTMENT STORE.

b6
b7C

THIS CASE RECEIVING CONTINUOUS INVESTIGATION.

P. END.

REW FBI WASH DC

TKS C U

CLR

November 2, 1971

REC-4

Los Angeles, California 90069

Dear [redacted]

I readily understand the reasons which prompted your letter of October 22nd and, while I would like to respond to the points you raised, the matter involving the hijacking of a chartered aircraft to Jacksonville, Florida, on October 4th is currently the subject of court action. On November 1st U. S. District Judge Gerald B. Tjoflat, Middle District of Florida, Jacksonville, Florida, issued an order prohibiting all Government Agents and employees, including the FBI, from making any statements regarding the events set out in and surrounding the criminal indictment in this case to any persons not associated with the Federal Government.

Sincerely yours,

J. Edgar Hoover

MAILED 20

NOV - 2 1971

FBI

- 1 - Los Angeles - Enclosure
- 1 - Jacksonville - Enclosure

NOTE: Correspondent is not identifiable in Bufiles. Response correlated with Office of Legal Counsel.

Tolson _____
Felt _____
Rosen _____
Mohr _____
Bishop _____
Miller, E.S. _____
Callahan _____
Casper _____
Conrad _____
Dalbey _____
Cleveland _____
Ponder _____
Bates _____
Tavel _____
Walters _____
Soyars _____
Tele. Room _____
Holmes _____
Gandy _____

JBT:nmi (5)

61 NOV 11 1971

MAIL ROOM ☐ TELETYPE UNIT ☐

SD/GCM

Handwritten notes and signatures:
✓ PAB
7
RSG
F. AUB.
JBT
Rm 7-11-724

Los Angeles, California 90069 - Telephone

LITERARY AGENTS

October 22, 1971

Mr. J. Edgar Hoover
Federal Bureau of Investigation
Pennsylvania Avenue at Ninth
Washington, D.C.

Dear Mr. Hoover:

I would like to vigorously protest the high-handed and arbitrary actions of the F.B.I. agents involved in the unnecessary murder of pilot Brent Q. Downs at the Jacksonville, Florida Airport. I have great sympathy and respect for the enormous burden borne by the Bureau and the difficulties in solving problems such as this. It is nevertheless apparent that the agents involved saw only their responsibility in the apprehending of a criminal and not the much greater and more important consideration---that of the safety of his hostages. I fear that this attitude--unless checked--can lead to more disastrous situations and further deterioration of the respect which is absolutely necessary for the general public to have for law enforcement officers. I very much doubt that you, Mr. Hoover, would have approved the quote of one of your agents, "Well, you can't win them all," if it were applied to your safety.

Sincerely,

Brent Quinton Downs

RAR:nh

cc: President Richard M. Nixon

Mr. Tolson ✓
Mr. Felt ✓
Mr. Rosen ✓
Mr. Mohr ✓
Mr. Bishop ✓
Mr. Miller, ES ✓
Mr. Callahan ✓
Mr. Casper ✓
Mr. Conrad ✓
Mr. Dalbey ✓
Mr. Cleveland ✓
Mr. Ponder ✓
Mr. Tavel ✓
Mr. Walters ✓
Mr. Soyars ✓
Tele. Room ✓
Miss Holmes ✓
Miss Gandy ✓

EXP. PROC.

OCT 26 1971

ENCLOSURE

ACK'd
10/27/71
JBT/2 p.m.

EX-115

REC-4

NOV 4 1971

November 2, 1971

GENERAL INVESTIGATIVE DIVISION

This concerns the hijacking of a chartered aircraft from Nashville, Tennessee, to Jacksonville, Florida, 10/4/71.

Attached advises on November 1, 1971, U. S. District Judge Gerald B. Tjoflat, Middle District of Florida, Jacksonville, Florida, issued an order prohibiting all Government Agents and employees, including FBI and Federal Aviation Administration from making any statements to any non-Federal Government persons regarding the events set out in and surrounding the criminal indictment in this case.

Court order also prohibits reproduction of any Governmental documents or material pertaining to the case and prohibits public statements written or oral regarding evidence in this case, except as authorized by order of the court.

Defendant [redacted] attorney offered no objection to order issued by U. S. District Judge Tjoflat. We are consulting Criminal Division of the Department to insure Judge's CBjr/jak court order does not in any way restrict our criminal investigation.

b6
b7C

164-2072-155
ENCLOSURE

(1)

COMMUNICATIONS SECTION

NOV. 1 1971

TELETYPE

NR007 JK PLAIN

9:15 PM IMMEDIATE 11-1-71 ALH

TO DIRECTOR

MEMPHIS (164-76)

ATLANTA

FROM JACKSONVILLE (164-103) (P)

Mr. Rosen
Mr. Mohr
Mr. Bishop
Mr. Miller, Jr.
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Dalbey
Mr. Cleveland
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Walters
Tele. Room
Miss Holmes
Miss Gandy

GEORGE MALLORY GIFFE, JR., ALSO KNOWN AS (DECEASED); [REDACTED] SUSAN

LAKICH GIFFE, AKA - VICTIM (DECEASED); BRENT QUINTON DOWNS - VICTIM

(DECEASED); [REDACTED] - VICTIM. CRIME ABOARD AIRCRAFT - HIJACKING, INTIMI-

DATION OF CREW MEMBERS, CARRYING CONCEALED WEAPON ABOARD AIRCRAFT;

KIDNAPING; Federal Tort Claims Act
PTCA- 00: JK-

Office of Origin: Jacksonville

JACKSONVILLE DAILY SUMMARY, NOVEMBER ONE, SEVENTY ONE.

November U.S. District Judge Middle District of Florida
ON NOV. ONE, INSTANT, USDJ GERALD B. TJOFLAT, MDP, JACKSONVILLE,

FLORIDA, ISSUED ORDER PROHIBITING ALL GOVERNMENT AGENTS AND EMPLOYEES,
INCLUDING FBI AND FAA EMPLOYEES, FROM MAKING ANY STATEMENT TO ANY NON-
FEDERAL GOVERNMENT PERSONS REGARDING THE EVENTS SET OUT IN AND SUR-
ROUNDING THE CRIMINAL INDICTMENT IN THIS CASE.

ORDER CONTINUES THAT NO PARTY IN THIS CASE OR COUNSEL OR AGENT
SHALL REPRODUCE ANY GOVERNMENTAL DOCUMENTS OR OTHER MATERIAL PERTAINING
TO CASE, OR DISCLOSE THE CONTENTS THEREOF, EXCEPT AS AUTHORIZED BY
COURT.

END PAGE ONE

164-2042-155
[REDACTED]

(2)

NO PARTY TO CASE OR COUNSEL OR AGENT SHALL MAKE OR ISSUE ANY PUBLIC STATEMENT, WRITTEN, OR ORAL, REGARDING THE EVIDENCE IN THIS CASE EXCEPT AS AUTHORIZED BY ORDER OF THE COURT.

THIS ORDER SHALL NOT BE CONSTRUED TO IMPAIR THE CONTINUED PUBLIC NATURE OF THESE PROCEEDINGS NOR TO RESTRICT THE DISCOVERY RIGHTS OF THE DEFENDANT.

JUDGE TJOFLAT TOOK PARTICULAR NOTICE OF THE RECENT UNAUTHORIZED DISCLOSURES BY PERSONS NOT PARTY TO THE CASE, OF TRANSCRIPTS OF THE TAPES INVOLVED WHICH RECEIVED WIDESPRED NEWS MEDIA COVERAGE.

JUDGE TJOFLAT SET FORTH IN THE PREAMBLE OF HIS ORDER THAT DESPITE THE FACT THAT VENUE IN THE CRIMINAL PROCEEDINGS AND POTENTIAL FICA ACTIONS LIES WITH HIS COURT IN JACKSONVILLE, THE CLAIMANTS PETITIONED U. S. DISTRICT COURT ^{Tennessee} THE USDC IN NASHVILLE, TENN. HE SAID THAT THE TESTIMONY AND EVIDENCE WHICH WAS PETITIONED FOR WOULD, IN ALL PROBABILITY, BE OFFERED AS EVIDENCE IN THE CRIMINAL TRIAL.

ATTORNEY [] REPRESENTING SUBJECT [] WAS PRESENT MORNING OF NOV. FIRST, INSTANT, WHEN HEARING HELD IN JUDGE'S CHAMBERS ON THIS ORDER. [] OFFERED NO OBJECTIONS TO ORDER PROPOSED BY JUDGE TJOFLAT AND INDICATED THAT HE WILL BE RETAINED ON A FEE BASIS BY SUBJECT [] FAMILY.

b6
b7C

END PAGE TWO

3

JK 164-103

PAGE THREE

JACKSONVILLE WILL FURNISH THE BUREAU WITH FACSIMILE COPY OF ABOVE COURT ORDER. COPY OF ORDER BEING FURNISHED MEMPHIS OFFICE AND COPY WILL BE FURNISHED TO NASHVILLE RA FOR DISSEMIATION TO ^{U. S. ATTORNEY} USA-S. OFFICE, NASHVILLE, THIS PM.

S PRESS COVERAGE ATTENDED SIGNING OF JUDGE TJOFLAT'S ORDER AT JACKSONVILLE AND PRESS COVERAGE EXPECTED TO BE WIDE SPREAD.

JACKSONVILLE AND MEMPHIS UPON RECEIPT OF ANY PRESS INQUIRES WILL INDICATE QUOTE NO COMMENT UNQUOTE ^{UNLESS ADVISED TO THE CONTRARY BY BUREAU} UACB.

JACKSONVILLE AND MEMPHIS WILL INSURE THAT BUREAU IS ADVISED OF ALL PERTINENT COURT ACTION AND DEVELOPEMENTS.

Federal Aviation Administration
ATLANTA WILL INSURE THAT FAA-REGIONAL OFFICE AWARE OF COURT ORDER FILED THIS DAY IN JACKSONVILLE.

END

GXC FBI WASHDC

cc: Mr. Bishop

MR. ALLEN

4

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

NOV 2 1971

TELETYPE

NR005 AT PLAIN

1:40 PM URGENT 11/2/71 ELS

TO DIRECTOR

JACKSONVILLE 164-103

FROM ATLANTA 164-241

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, ES	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Cleveland	_____
Mr. Ronder	_____
Mr. Bates	_____
Mr. Tavel	_____
Mr. Walters	_____
Mr. Soyars	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

4-1
11-1
6-1
9-1

1642

GEORGE MALLORY GIFFE, JR., AKA (DECEASED);

SUSAN LAKICH GIFFE, AKA - VICTIM (DECEASED); BRENT

QUINTON DOWNS - VICTIM (DECEASED);

VICTIM.

CAA - HIJACKING; INTIMIDATION OF CREW MEMBERS, CARRYING CONCEALED
WEAPON; KIDNAPPING; FTCA. OO:JACKSONVILLE.

RE CHARLOTTE TEL TO BUREAU OCT. TWENTYNINE, SEVENTYONE.

EFFORTS TO LOCATE [REDACTED] THROUGH WIFE, [REDACTED]

NEGATIVE NOV. ONE, SEVENTYONE. INVESTIGATION AT FOUR BIG

APPLE STORES, MARIETTA, GA., FAILED TO REFLECT EMPLOYEE NAMED

[REDACTED] ON NOV. ONE, SEVENTYONE, CONTACT WITH [REDACTED] DAUGHTER-

IN-LAW, [REDACTED]

REFLECTED [REDACTED]

EMPLOYED KROGER FOODS, SMYRNA, GA. HUSBAND

EMPLOYED PULTE HOMES, INC., MARIETTA. EFFORTS TO CON-

TACT [REDACTED] NEGATIVE NOV. ONE, SEVENTYONE.

END PAGE ONE

EX-100

REC-4

164-2042-157

17 NOV 4 1971

60 NOV 15 1971

PAGE TWO

AT 164-241

PHONE

b6
b7C

[REDACTED] INTERVIEWED THIS DATE AT PULTE
HOMES, INC., FOXHILLS DEVELOPMENT, THIRTYNINE TWENTYONE PAPER MILL
ROAD, MARIETTA, GA., WHERE [REDACTED] EMPLOYED AS [REDACTED]

[REDACTED] ADVISED HE WAS FORMERLY EMPLOYED AS [REDACTED] BY
MAGNAVOX CORPORATION, ANDREWS, NORTH CAROLINA, FROM UNRECALLED MONTH,
NINETEEN SIXTYFIVE, THROUGH AUG., SIXTYNINE, AT WHICH TIME [REDACTED]
WAS LAID OFF PENDING OUTCOME OF INVESTIGATION IN CONNECTION WITH
HIS ASSOCIATION WITH [REDACTED]
INVOLVING FALSIFICATION OF COMPANY PAY RECORDS.

[REDACTED] STATED THAT [REDACTED] HAD OBTAINED EMPLOYMENT WITH MAGNAVOX
SOMETIME DURING SIXTYNINE AS A MAINTENANCE FORMAN AND THAT HE,

[REDACTED] WORKED FOR [REDACTED]

[REDACTED] STATED IT WAS COMPANY POLICY AT MAGNAVOX THAT EACH MAN
WAS TO PUNCH HIS OWN TIME CARD UPON LEAVING WORK EACH DAY. HOWEVER,
IN ORDER TO AVOID STANDING IN LINE EACH DAY AT THE TIME CLOCK, THE
MEN WOULD TAKE TURNS PUNCHING THE CLOCK FOR EACH OTHER. [REDACTED] ADVISED
THAT [REDACTED] BEING THE FORMAN, WOULD AS A FAVOR FOR HIS MEN, PUNCH
THE CLOCK FOR SEVERAL OF THEM AND ON ONE DAY IN AUG, SIXTYNINE, [REDACTED]
ALONG WITH [REDACTED] WERE CAUGHT BY COMPANY OFFICIALS.

[REDACTED] STATED THAT [REDACTED] FEELING THAT NO HARM HAD BEEN DONE,
IMMEDIATELY ADMITTED HAVING DONE THIS FOR HIS MEN ON PREVIOUS

END PAGE TWO

PAGE THREE

AT 164-241

OCCASIONS. ON THE SAME DAY, [] WERE FIRED BY MAGNAVOX. [] ADVISED HE WAS NOT AT WORK THE DAY [] WERE FIRED; HOWEVER, HE, [] WAS LAID OFF PENDING OUTCOME OF ADDITIONAL INVESTIGATION BY THE COMPANY. [] LATER OBTAINED EMPLOYMENT ELSEWHERE.

b6
b7c

[] STATED TO THE BEST OF HIS RECOLLECTION, THE TIME CARDS WERE THE ONLY REASON FOR [] DISMISSAL.

[] ADVISED HE ONLY KNEW [] FOR A VERY SHORT PERIOD OF TIME IN SIXTYNINE. HOWEVER, WHEN [] AND HIS WIFE, [] AND YOUNG SON CAME TO ANDREWS, N.C., IN SIXTYNINE, [] DID SOME BOATING AND FISHING, AND ON OCCASION HAD SOME SOCIAL DRINKS TOGETHER. [] ADVISED THAT [] DRANK "LOADS OF BEER"; HOWEVER, "HELD IT WELL" AND NEVER DISPLAYED SIGNS OF INTOXICATION OR OTHERWISE BEING AFFECTED BY ALCOHOL. ALSO, [] WAS WELL LIKED BY THE MEN AT MAGNAVOX, AND TO THE BEST OF HIS RECOLLECTION, [] HAD NEVER HAD ANY DISCIPLINARY ACTION TAKEN AGAINST HIM BY THE COMPANY NOR HAD HE EVER BEEN IN TROUBLE WITH LAW ENFORCEMENT. ALSO, THE LAST TIME [] SAW [] IN SIXTYNINE, [] APPEARED TO BE EXPERIENCING NO MARITAL DIFFICULTIES AND/OR OTHER PROBLEMS.

[] ADVISED HE HAS SINCE SIXTYNINE RECEIVED AT LEAST TWO LETTERS FROM [] AND [] TOLD HIM THAT HE HAD RETURNED TO HIS FORMER EMPLOYER, WHITE ENGINEERING COMPANY, NASHVILLE, TENN.
END PAGE THREE

PAGE FOUR

AT 164-241

[REDACTED] IN THE LAST LETTER, TALKED ABOUT HIS WIFE, [REDACTED]
AND INDICATED THAT ALL WAS WELL. [REDACTED] HAS NOT SEEN NOR HEARD
FROM [REDACTED] SINCE RECEIVING THE LAST LETTER IN LATTER SIXTY-
NINE, AND [REDACTED] HAD NO IDEA AS TO [REDACTED] CURRENT EMPLOYMENT
OR WHEREABOUTS.

b6
b7C

INVESTIGATION CONTINUING ATLANTA.

AM COPY SENT CHARLOTTE (ONE SIXTYFOUR - NINETYEIGHT).

END

DRL FBI WASH DC

8

8

SI-103

164-2042-158

October 29, 1971

REC-4

[Redacted]
 North Andover, Massachusetts 01845

Dear [Redacted]

b6
b7C

Your letter, with enclosure, was received on October 26th and I readily understand the reasons which prompted you to write. I would like to respond to each of the points you raised; however, the matter involving the hijacking of a chartered aircraft to Jacksonville, Florida, and the subsequent action taken by the FBI is presently the subject of litigation in the courts. For this reason it is not possible for me to comment on this situation.

I recognize that your judgment of improper action on the part of the FBI is based on accounts of this incident that have appeared in the various news media and I am sure you will agree that everything printed in the newspapers is not always entirely accurate. The full facts of this situation will be brought to light during public trial; however, I can assure you at this time that no Special Agent of the FBI made the statement, "You can't win 'em all," that appeared in the newspaper account you enclosed.

Sincerely yours,

J. Edgar Hoover

MAILED 7
 OCT 29 1971
 FBI

Tolson _____
 Felt _____
 Rosen _____
 Mohr _____
 Bishop _____
 Miller, E.S. _____
 Callahan _____
 Casper _____
 Conrad _____
 Dalbey _____
 Cleveland _____
 Ponder _____
 Bates _____
 Tavel _____
 Walters _____
 Soyars _____
 Tele. Room _____
 Holmes _____
 Gandy _____

NOTE: Correspondent is not identifiable in Bufiles.

JBT:jkm

6 NOV 10 1971

MAIL ROOM ☐ TELETYPE UNIT ☐

205 JHM

msk

HWA

JBT

JBT

8

8/25/71

Mr. Tolson ☒
 Mr. Felt ☒
 Mr. Rosen ☒
 Mr. Mohr ☒
 Mr. Bishop ☒
 Mr. Miller, E.S. ☐
 Mr. Callahan ☐
 Mr. Casper ☐
 Mr. Conrad ☒
 Mr. Dalbey ☒
 Mr. Cleveland ☐
 Mr. Ponder ☒
 Mr. Bates ☒
 Mr. Tavel ☐
 Mr. Walters ☒ b6
 Mr. Soyars ☒ b7C
 Tele. Room ☐
 Miss Holmes ☐
 Miss Gandy ☒

October 19, 1971

[Redacted Address]

N. Andover, Ma 01845

Dear Mr. Hoover,

Boston, Mass

Mayfield

I bring your attention to an article that was in the Boston Globe, October 19, 1971. I find it hard to believe that the FBI could have deliberately left the pilots life in such danger. The "We always get our man" motto should not include "no matter who gets in the way." If the remark, "you can't win 'em all" can be attributed to an FBI agent. that is simply an inhuman attitude. Regardless, sir, I ask that you investigate this incident. I appreciate your efforts and ask that I may be informed of the results of that investigation. Thank you.

Sincerely yours,

[Redacted Signature]

copy:djk

Acknowledged
 10-24-71
 JBT: [unclear]
 10/24/71

JBT

nmh

October 9, 1971

Tolson	_____
Felt	b6 _____
Rosen	b7C _____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, E.S.	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Cleveland	_____
Mr. Ponder	_____
Mr. Bates	_____
Mr. Tavel	_____
Mr. Walters	_____
Mr. Soyars	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

D. Q. Over, MA

Dear Mr. Hoover,

I bring your attention to an article that was in the Boston Globe, October 10. I find it hard to believe that the FBI could have deliberately left the pilots in such danger. The "We always get in our man" motto should not include "no ~~negotiate~~ who gets in the way." If the remark, "you can't win 'em all" can be attributed to an FBI agent, that is simply an inhuman attitude. Regardless, sir, I ask that you investigate this incident. I appreciate your efforts and ask that I may be informed of the results of that investigation. Thank you.

Sincerely yours

GEORGE M. GIFFE, JR

MM
ENCLOSURE

ack
ACK/mm
10-29-71
JBT/

ST-103

REC-4

104-2042-158

11-4
18 OCT-26 1971

CORRESPONDENCE

FBI ignored hijacked pilot's plea

By George Lardner Jr.
Washington Post

When Brent Q. Downs taxied his plane to a stop at Jacksonville International Airport this month, he wondered, nervously, where the fuel truck was.

Downs, a 29-year-old pilot from Nashville, Tenn., had every reason to be nervous. Downs' twin-engine Aero Commander had been commandeered in Nashville at gunpoint by a beefy hijacker who was kidnapping his estranged wife.

Ordered to take them to the Bahamas, Downs was in no mood to argue. But he needed more fuel. He radioed his needs to Jacksonville; fuel, charts, flotation gear and two bottles of Chivas Regal. He was assured that he could refuel without interference, that everything, except perhaps for the scotch, "will be ready as specified."

Instead, the unsuspecting pilot was directed to a parking pad where FBI agents were waiting in the pre-dawn darkness. Abruptly, Downs found another FBI man barking instructions to him from the airport control tower, instructions that he protested were "endangering lives."

The FBI, it has been learned, heard and repeatedly ignored the captive pilot's desperate pleas.

Within minutes, Brent Downs was dead, shot in the back by the hijacker after FBI agents began pumping bullets into the parked plane's wheels and one of its engines.

The hijacker, a 300-pound Nashville real estate agent named George M. Giffe Jr., then turned his 45-caliber automatic on his estranged young wife and finally on himself. All three were dead or dying when the G-men clambered aboard.

Shortly after the shootings, sources say, someone in the control tower cracked: "You can't win 'em all."

The FBI's refusal to stay away from the plane and let Downs refuel, despite his stammered protests, is contained in a hitherto secret transcript of the last radio transmissions between the pilot and authorities. A copy has been obtained by The Washington Post.

The tragedy began early in the morning of Oct. 4 when the 35-year-old Giffe arranged to meet his wife, reportedly on the pretext of saying goodbye before he left the country.

after a troubled three-year marriage. Mrs. Giffe, police reported was packed, kicking and screaming, into the back seat of a car that her husband drove to the Nashville airport.

Giffe, who has been quoted by friends as saying he was a sorcerer, leased the plane from Big Brothers Aircraft with the story that he was

BACKGROUND

a doctor and that his wife needed treatment in Miami. But Mrs. Giffe began screaming that she was being kidnaped and Larry Reed, an employee of Big Brothers, asked Giffe for his credentials. At that, Reed said, both Giffe and a friend, Bobby Wayne Wallace, drew pistols and ordered Downs to take off, just before 2 a.m.

The police in Nashville reported that Giffe had left five suicide notes in the car he drove to the airport. In one of them, addressed to his father, he said that he had been "ordered to kill."

The FBI was notified after the plane left Nashville and dispatched agents to the Jacksonville airport when the pilot radioed he was landing for fuel and other items.

The FBI was notified after the plane left Nashville and dispatched agents to the Jacksonville airport when the pilot radioed he was landing for fuel and other items.

FBI agents already have been publicly excoriated by relatives and associates of the victims. The transcript, based on tape recordings from the files of the Federal Aviation Administration, suggests that their complaints are based on more than emotions.

According to the transcript, Downs was assured several times—first by Jacksonville Air Traffic Control which is located about 30 miles north of the airport and then by the regular control tower operator at the field itself—that a fuel truck would be standing by when he taxied his plane, code-named "58 November," to its assigned spot. The transcript includes these exchanges, beginning seconds after the privately owned turboprop touched down.

Pilot (Downs): "Is the fuel truck here?"

Tower: "You say is it a fuel truck?"

Pilot: "I say is the fuel truck here?"

Tower: "Affirmative. Taxi straight ahead to the end, commander 58 November, all the way to the end

Pilot: (This is) 58 November. They are going to keep this area clear. Is that correct?"

Tower: "That's affirmative."

Pilot: "All right. (Pause) What's the car sitting back off to our right?"

Tower: "It's just an airport vehicle as far as I know, sir."

Evidently Downs asked that it be moved away. At this point, another voice, that of an FBI agent, took over the control tower microphone.

FBI agent in tower, "58 November? ... 58 November. This is the FBI speaking. Cut your engine."

Pilot: "... This is the captain speaking. We're going to cut the engines and we're gonna need some fuel, but I request that everyone stay away."

Agent: "58 November. Advise when your engines have been cut. 58 November?"

Pilot: "This is 58 November. Uh, this gentleman has about 12.5 pounds of plastic explosives back here and (pause) uh, I got no (pause) uh, yen to join it right now so I would please expr ... uh, appreciate it if you would stay away from this airplane."

Agent: "That's a Roger, 58 November. Are your engines cut?"

Agent: "Negative."

Pilot: "Negative."

Agent: "Stand by."

Pilot: "Where's the fuel truck? ..."

Agent: "This is the FBI. Repeat. There will be no fuel. There will be no fuel. There will be no starter (which Downs had also requested to get the plane airborne again). Have you cut your engines?"

(Pause) Pilot: "Uh (gasp); look, I don't think this fellow's kiddin'—I wish you'd get the fuel truck out

Agent: "58 November. There will be no fuel. I repeat. There will be no fuel."

Pilot: "This is 58 November. You are endangering lives by doing this, and uh, we have no other choice but to go along and, uh, uh, for the sake of some lives we request some fuel here, please."

(Pause)

Agent: "58 November. What is the status of your passengers?"

Pilot: "Ah, uh, well, they're okay, if that's what you mean."

Agent: "Are they monitoring this conversation?"

Pilot: "Yes, they are."

Agent: "Do you have two passengers aboard?"

(Pause)

Agent: "58 November. What's

your present craft?"

Pilot: "Within minutes."

Agent: "58 November. No starter. No want. Passengers—the only aircraft is to depart the aircraft."

Here, the apparently for among those sides Downs, old wife, Su pilot Randal friend Walla accused of ai for helping G

At one po two fliers to refueling, bu were afraid after looking spotting a clu closer than t it was decide the plane an into letting t

Pilot Dov gines so the with Crump' hopped out, o portedly said who hustled some 35 yard pear to have cussing what Crump has h

The tran and pieces c FBI agent named by s was in sepa agents on the James O'Con

ENCLOSURE

164-2042-158

ORIGINALS CONTAINED
KEEP ENVELOPE ATTACHED

DO-6
OFFICE OF DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

October 26, 1971

The attached letter and clipping were sent to the Director from an anonymous source in Saint Joseph, Missouri. The envelope is addressed to -- "J. Edgar Tigellinus Hoover."

George M. Giffie Jr.

nm

MR. TOLSON ☒
MR. FELT ☒
MR. ROSEN ☒
MR. MOHR ☒
MR. BISHOP ☒
MR. MILLER, E.S. ☒
MR. CALLAHAN ☒
MR. CASPER ☒
MR. CONRAD ☒
MR. DALBEY ☒
MR. CLEVELAND ☒
MR. PONDER ☒
MR. TAVEL ☒
MR. WALTERS ☒
MR. SOYARS ☒
MR. JONES ☒
TELE. ROOM ☒
MISS HOLMES ☒
MRS. METCALF ☒
MISS GANDY ☒

Malmgren

Anonymous
Noack
10-8

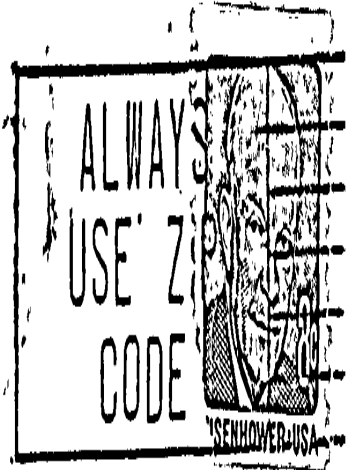
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eth
Mh

ENCLOSURE

ENCLOSURE ATTACHED

EX-101 REC-36164-2042-159
NOT RECORDED
6 OCT 29 1971

51 NOV 11 1971



J. Edgar Tigellinus Hoover
The Federal Bureau of Investigation
The Justice Department
Washington, D. C.



P.W.
F318
164-2042-159

FBI Role in Air Tragedy Reported

Dear Edgar:

Come on now, Tigellinus, tell us the truth. Who lost their cool?

Seems to me someone wants to play hero when emotional control and horse sense is the order of the day.

There is no record of anyone being harmed when a hijacking took place and someone tries to play hero to my knowledge.

A hijacker just has to be out of emotional control to pull such a stupid trick, but too damned set of fools too often meet and someone gets hurt.

How are you so self-righteously going to cover up the truth on the tapes now?

Just about as self-righteously as the Pentagon, Lyndon and Nero covered up the truth that was on the tapes of the destroyers involved in the

Gulf of Tonkin incident when another set of foolish people lost their cool and panicked like Nervous Nellies and got us involved in this stupid war in Vietnam.

Did you ever read the Bible, J. Edgar? The real kicker in Phase III of God's secret plan is Revelations 13:9. "Listen, then, if you hear a voice: Whoever is heard to be captured, will surely be captured; whoever is meant to be killed by the sword, will surely be killed by the sword. This calls for endurance and faith on the part of God's people."

Does that scare the hell out of you J. Edgar? If you knew the real truth of how really misleading this is maybe you would be scared and maybe you wouldn't. The truth is that only human minds will be captured with the truth. The sword is merely Jesus' little sword of truth he gave us to fight our battles with and if this cuts someone's throat, that is their problem. I will be watching patiently to watch the schizophrenics cover up their tracks, just like I have watched them cover up their tracks on the Gulf of Tonkin incident where another bunch of God's foolish people panicked over nothing. Nervous Nellies is right.

Well try this one, Edgar. This calls for wisdom. Whoever is intelligent can figure out the meaning of the number of the beast, because the number stands for a man's name. Its number is six hundred sixty six. Put your little old computers to work figuring this deal out, Tigellinus.

Sincerely,

~~The~~ Dragon With The Horns of a Lamb

WASHINGTON (AP)—FBI agents repeatedly ignored a hijacked pilot's plea to let him refuel just before the affair ended in tragedy Oct. 4, the Washington Post reported today.

Moments before he was shot to death by his captor at Jacksonville, Fla., airport, pilot Brent Q. Downs is quoted as telling the FBI: "You are endangering lives by doing this. We request some fuel out here, please."

The newspaper gave the account of the hijacking in a hitherto secret transcript of the last radio transmission between the pilot and authorities.

Left Notes

Police said the hijacker, George M. Gluff Jr., 35, took his estranged wife by force to the Nashville airport early that morning after leaving suicide notes. They said he and a friend, Bobby Wayne Wallace, drew pistols on the pilot and ordered him to fly his private twin-engine Aero-Commander to the Bahamas.

When the plane took off, the FBI was notified, and when the pilot said he would land in Jacksonville for fuel, agents were sent to the airport.

The transcript said Downs was told by the air control tower that a fuel truck would be standing by. Later, the newspaper said, an FBI agent in the control tower directed Downs to a different landing site and others surrounded the plane, exchanging gunfire with the hijacker.

Downs was shot in the back by the hijacker, who turned his 45-caliber automatic on his wife and finally himself. All three died, but the co-pilot and Wallace were not hurt.

Part of Transcript

Here is part of the transcript printed by the Post:

Pilot: "Where's the fuel truck?"

Tower: "This is the FBI. There will be no fuel. Repeat. There will be no fuel. There will be no starter, which Downs had also requested to get the plane

airborne again. Have your cut your engines?"

Pause

Pilot: "Uh (gasp), look. I don't think this fellow's kidding. I wish you'd get the fuel truck out here."

Tower: "53 November (plane code name) there will be no fuel. I repeat. There will be no fuel."

Pilot: "This is 53 November. You are endangering lives by fuel. I repeat. There will be no fuel. I repeat. There will be no other choice; but to go along and, uh, for the sake of some lives we request some fuel out here, please."

Left Plane

The co-pilot, Randall Crump, then left the plane to talk to agents, the newspaper said, but was hustled into a waiting car.

Wallace, 32, also jumped out and moments later, the FBI and the hijacker exchanged fire.

The transcript ends with a question from the control tower: "53 November?"

659-7642-691

EX-104

November 3, 1971

PERS. REC. UNIT

REC 43

164-2042-160

b6

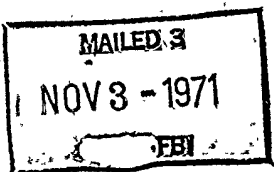
b7C

Delta Air Lines, Inc.
General Offices
Atlanta Airport
Atlanta, Georgia 30320

Dear [REDACTED]

I have received your communication of October 26th, with enclosures, concerning the hijacking on October 4th of a private chartered flight to Jacksonville, Florida. It was thoughtful of you to write as you did and I appreciate your comments regarding this matter.

Sincerely,
J. Edgar Hoover



Tolson _____ 1 - Atlanta - Enclosures (4)

Felt _____

Rosen _____

Mohr _____

Bishop _____

Miller, E.S. _____

Callahan _____

Casper _____

Conrad _____

Dalbey _____

Cleveland _____

Ponder _____

Bates _____

Tavel _____

Walters _____

Soyars _____

Tele. Room _____

Holmes _____

Gandy _____

NOTE: [REDACTED] is on Special Correspondents List and is former ASAC, EOD 12-13-37, retired 1-19-68. Bufiles disclose no record identifiable with [REDACTED]

JJH: set

NOV 17 1971

MAIL ROOM ☐ TELETYPE UNIT ☐

TEB/LFR
Jen

msr

JJH



DELTA AIR LINES, INC.

GENERAL OFFICES, ATLANTA AIRPORT, ATLANTA, GEORGIA 30320

October 26, 1971

Mr. Tolson
Mr. Felt
Mr. Rosen
Mr. Mohr
Mr. Bishop
Mr. Miller, ES
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Dalbey
Mr. Cleveland
Mr. Ponder
Mr. Felt
Mr. Tavel
Mr. Walters
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

b6
b7C

Mr. J. Edgar Hoover
Director
Federal Bureau of Investigation
U. S. Department of Justice
Ninth and Pennsylvania
Washington, D. C. 20535

Dear Mr. Hoover:

The attached copy of our letter to [redacted] and a copy of his letter and newspaper clipping are enclosed for your information.

Sincerely,

[redacted signature box]

EHS:gbm

Enclosures

CEL 52
REC'D
ENCLOSURE
11-3-71

rel pack
11-3-71
S.H. rel

EX-104

REC 43

164-2042-160

NOV 28 1971

CORRESPONDENCE

PERS. REC. UNIT

Encl.

1-2042

Encl
4-2
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Canfieldt

PROG
EX-104
NOV 28 1971

SCL
NY 74



DELTA AIR LINES, INC.

GENERAL OFFICES, ATLANTA AIRPORT, ATLANTA, GEORGIA 30320

October 26, 1971

b6
b7C

[Redacted]
Royal Oak, Michigan

Dear [Redacted]

Your letter of October 20, 1971, concerning the events that might occur when someone attempts to hijack an aircraft has been referred to this office.

C
O
P
Y

I have noted the news clipping which you have sent which gives the impression that the FBI deliberately endangered the lives of persons aboard a hijacked chartered aircraft on which five persons rode from Nashville, Tennessee, to Jacksonville, Florida. We here at Delta want you to know that in the event of an aircraft being hijacked or some other incident occurring that would endanger the lives of the passengers, the captain is the one who makes the decision whenever possible as to when outside intervention should occur or no action taken at all.

The Federal Bureau of Investigation certainly does not need any defense by this company as we have found this organization and their Special Agents acutely aware of the safety of all passengers and the flight crew in each and every instance where they have been called upon for assistance.

We here at Delta appreciate your concern, and I hope that the above information will reassure you concerning the priorities involved in these unfortunate situations. We would further suggest that when all of the facts are known in the case to which you refer you will undoubtedly find that the considerations mentioned above were fully taken into account.

Consistent with your comments we have taken the liberty of furnishing your letter and the news clipping to the Federal Bureau of Investigation so that your comments will also be made known to them. I trust that you will continue to fly Delta Air Lines, and we are most appreciative of the favorable comments that you have made concerning our service.

Very truly yours,

EHS:gbm

cc: J. Edgar Hoover, Director, Federal Bureau of Investigation,
Washington, D. C. (Enclosures)

164-2042-160
ENCLOSURE
- 1 -

FBI Ignores Slain Pilot, Hijack Recording Shows

WASHINGTON — (UPI) — The Washington Post reported Monday that the FBI rejected a pilot's plea that it was endangering lives by refusing fuel to a hijacked plane. The pilot, the hijacker and his estranged wife died in the pre-dawn incident Oct. 4 in Jacksonville, Fla.

Printing what it said were secret tapes of the last transmissions between pilot Brent Q. Downs and the Jacksonville International Airport tower, the newspaper said the FBI "heard and repeatedly ignored the captive pilot's desperate pleas."

The Federal Aviation Administration (FAA) declined to comment Monday, saying the Justice Department had taken jurisdiction. The FBI refused to comment on grounds that survivors' lawsuits are pending.

The hijacker, George A. Giffe Jr., had chartered the plane in Nashville, Tenn., shortly before 2 a.m. When a charter airline official asked Giffe about the screams of his wife, Giffe and a friend, Bobby Wayne Wallace, pulled guns and ordered the pilot to take off.

Pilot: "Uh (gasp), look I don't think this fellow's kiddin' -- I wish you'd get the fuel truck out here."

When the plane landed at Jacksonville, Downs nervously sought assurance that he would be allowed to refuel and continue on. He got that assurance from the tower, but then an FBI agent took the microphone.

Tower: "58 November (the hijacked plane's call letters)? This is the FBI speaking. Cut, your engine."

Pilot: " . . . This is the captain speaking. We're going to cut the engines and we're

Please turn to Page 2A, Col. 1

FBI Ignored Slain Pilot, Hijack Recording Shows

© Continued from Page 1A ©

gonna need some fuel, but I request that everyone stay away."

Tower: "58 November. Advise when your engines have been cut, 58 November?"

Pilot: "This is 58 November. Uh, this gentleman has about 12.5 pounds of plastic explosives back here and (pause) uh, I got no (pause) uh, yen to join it right now so I would please expr . . . uh, appreciate it if you would stay away from this plane."

Tower: "That's a Roger, 58 November. Are your engines cut?"

Pilot: "Negative."

Tower: "Stand by."

Pilot: "Where's the fuel truck?"

Tower: "This is the FBI. There will be no fuel. Repeat. There will be no fuel. There will be no starter (which Downs also had requested to get the plane airborne, again). Have you cut your engines?"

(Pause)

Pilot: "Uh (gasp), look, I don't think this fellow's kiddin' -- I wish you'd get the fuel truck out here."

Tower: "58 November. There will be no fuel. I repeat. There will be no fuel."

Pilot: "This is 58 November. You are endangering lives by doing this, and, uh, we have no other choice but to go along and, uh, for the sake of some lives we request some fuel out here, please."

(Pause)

Tower: "58 November. What is the status of your passengers?"

Pilot: "Ah, uh, well, they're okay, if that's what you mean."

Tower: "Are they monitoring this conversation?"

Pilot: "Yes, they are."

Tower: "Do you have two passengers aboard?"

(Pause)

Tower: "58 November. What's your present fuel status on that aircraft?"

Pilot: "We're down to 30 minutes."

Tower: "58 November. The decision will be no fuel for that aircraft. No starter. Run it out, any way you want. Passengers, if you are listening, — the only alternative in this aircraft is to depart the aircraft, to depart the aircraft."

MOMENTS LATER, the co-pilot left the plane to try to persuade the FBI to change its mind. He was hustled into an FBI car 35 yards away.

Tower: "The co-pilot is in the car and will not return to the aircraft. He will not return to the aircraft."

A moment later, Wallace jumped out of the plane. There was an exchange of gunfire. Giffe fired at an FBI agent. Agents shot the tires of the plane.

Inside the cockpit Giffe turned his gun on the pilot, his wife and himself.

The Post said sources reported that the FAA tape of the conversation between Downs and the tower included the background remark "you can't win 'em all," at the end of the episode, but this was not included on the transcript it received.

ENCLOSURE

Oct-20-71

SIR:

Lately I have Been flying Delta Jet's from here to Atlanta Ga. In my opinion you Run a good airline, every member of your crew's that I have observed knew his or her job, and I feel just as safe in a Delta Jet as I do in my own living room, But, when Im in an airplane, I dont want no one, interfering with the man in that No 1 or No 2 seat up Front; and that includes the F.B I. or even the President of the United States, so Please if it isnt already Co Policy Place an order on every Board, saying that the captain of the air craft is the sole, complete, master of his air craft at all times and if Possible Put out an order that no F.B.I. agent will be allowed within 5 miles of any air craft in Trouble, I know that if Im ever sitting there on a Jet waiting for takeoff and some Kook gets aboard, I want the captain of the air craft to use his own judgement as to what action to take.

sorry to have Trouble'd you but when I read this story of how they got this Pilot shot because of their stupid actions, I got sick, and if you want to you send J. E. Hoover a copy

THANK YOU,



Royal Oak, Mich.

b6
b7C

COPY:hcv

Oct-20-71

SIR:

Lately I have been flying
Delta jets from here to Atlanta
Ga. In my opinion you run a
good airline, every member of your
crew that I have observed know
his or her job, and I feel just
as safe in a Delta jet as I do
in my own living room. But, when
I'm in an airplane, I don't want
no one, interfering with the man
in that no 1 or no 2 seat up
front, and that includes the
FBI, or even the President of
the United States.

so Please if it isn't already co
Policy Place an order on every
Board, saying that the captain
of the aircraft is the sole, complete,
master of his aircraft at all

ENCLOSURE

164-2392-160

times and if possible. Put out an
order that no F.B.I. agent will
be allowed within 5 miles of any
aircraft in trouble. I know that if
I'm ever sitting there on a Jet waiting
for takeoff and some cock gets
aboard, I want the captain of the
aircraft to use his ^{own} judgement as to
what action to take.

sorry to have trouble to you but when
I read this story of how they got
this Pilot shot because of their stupid
acting I got sick, and if you want
to you send J. Edwards a copy

THANK YOU



Royal Oak, Mich.

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b7C

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Bates *Bates*

FROM : R. J. Gallagher *RJG*

SUBJECT: GEORGE MALLORY GIFFE, JR. (DECEASED);
[REDACTED]
MRS. GEORGE M. GIFFE, JR. - VICTIM
(DECEASED);
BRENT DOWNS - VICTIM (DECEASED);
[REDACTED] VICTIM
CRIME ABOARD AIRCRAFT - HIJACKING

DATE: November 3, 1971

1 - Mr. Rosen
1 - Mr. Bates
1 - [REDACTED]
1 - Mr. Gallagher
1 - [REDACTED]
1 - Mr. Felt
1 - Mr. Mohr
1 - Mr. Bishop
1 - Mr. Callahan
1 - Mr. Dalbey

Tolson _____
Felt _____
Rosen _____
Mohr _____
Bishop _____
Miller, E.S. _____
Callahan _____
Casper _____
Conrad _____
Dalbey _____
Cleveland _____
Ponder _____
Bates _____
Tavel _____
Walters _____
Soyars _____
Tele. Room _____
Holmes _____
Gandy _____

In connection with the October 4, 1971, hijacking of the private chartered flight from Nashville, Tennessee, to Jacksonville, Florida, Federal criminal proceedings have been instituted in United States District Court (USDC), Jacksonville, Florida, and a civil action has been filed in USDC, Nashville, Tennessee. The civil action is in behalf of the estates and next of kin of the persons killed by subject Giffe and the proceeding is pursuant to the Federal Tort Claims Act.

On November 1, 1971, United States District Judge (USDJ) Gerald B. Tjoflat, Jacksonville, Florida, issued an order prohibiting all Government Agents and employees from making any statement regarding the events in connection with this hijacking case. The Judge also ordered that no party or counsel should reproduce any Government documents or materials except as authorized by Judge Tjoflat's court. The Judge indicated the court in Jacksonville had venue in both the criminal and civil proceedings under the Federal Tort Claims Act.

During the actual hijacking incident, voice communications between the hijacked airplane and the control tower at the Jacksonville Airport were tape-recorded by Federal Aviation Administration authorities. Repeated efforts have been made by the press and others to obtain copies of these tape-recordings.

On November 2, 1971, a copy of Judge Tjoflat's order was made available to USDJ Frank Gray, Jr., in Nashville, Tennessee, two hours before a scheduled hearing in his court in connection with the civil case. In spite of this, Judge Gray ruled there is no element of privacy concerning the radio transmissions, and he advised Attorney [REDACTED] lawyer for the plaintiffs in the civil action, that [REDACTED] could take any action he desired with reference to the tape-recordings.

BHC:jyl

NOV 10 1971

CONTINUED - OVER

Memorandum to Mr. Bates
Re: George Mallory Giffe, Jr., Et Al.

Within two hours after the hearing, the tape-recordings were broadcast over Television Station WLAC-TV, Nashville, Tennessee, apparently having been furnished same by the plaintiffs' attorney. Other news media followed by broadcasting portions of the tape-recordings.

Information concerning the oral statements by Judge Gray and the fact portions of the tape-recordings have been publicly broadcast has been brought to the attention of the Criminal Division of the Department of Justice since it appears the actions by Judge Gray in the civil case could have very serious effects on the Federal criminal prosecution in Jacksonville, Florida.

ACTION:

Memphis has been instructed to obtain a copy of Judge Gray's recent court order as soon as possible after it is signed by the Judge and to furnish the Bureau a verbatim copy by wire when it is available. A copy of the court order will be furnished the Attorney General for whatever action he may desire to take..

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CWB
no

RS

R

PK
HRS

WBS

SD/
GCM

DA
JAM

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE MEMPHIS	OFFICE OF ORIGIN JACKSONVILLE	DATE 10/14/71	INVESTIGATIVE PERIOD 10/4-8/71	b6 b7C
TITLE OF CASE GEORGE MALLORY GIFFE, JR., (Deceased); Mrs. GEORGE M. GIFFE, JR., aka - VICTIM (Deceased)		REPORT MADE BY SA [REDACTED]	TYPED BY acp	
		CHARACTER OF CASE CAA - HIJACKING; KIDNAPING		

REFERENCES: Memphis teletype to Bureau and Jacksonville 10/4/71;
Memphis teletype to Bureau and Jacksonville 10/8/71.

- P -

LEADSJACKSONVILLEAT JACKSONVILLE, FLORIDA

Follow and report prosecutive action against
subject [REDACTED]

ACCOMPLISHMENTS CLAIMED						<input checked="" type="checkbox"/> NONE	ACQUIT- TALS	CASE HAS BEEN: PENDING OVER ONE YEAR <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES			

APPROVED.

SPECIAL AGENT
IN CHARGE

DO NOT WRITE IN SPACES BELOW

COPIES MADE:

- 1 - Bureau
1 - USA, Nashville
3 - Jacksonville (164-103)
1 (1 - USA, Jacksonville)
2 - Memphis (164-76)

164-2042-1692

EX 115

REC-46

20 OCT 18 1971

Dissemination Record of Attached Report

Notations

Agency	0-176MP	1 BC Chocemen
Request Recd.	10/15/71	Kn 331090
Date Fwd.	10/15/71	CSCh/20
How Fwd.	10/15/71	11/15/71
By	60 JUL 12 1972	

SEX
STAT/SECT.

ME 164-76

MEMPHIS

AT NASHVILLE, TENNESSEE

Continue efforts to develop information of evidentiary value in this case.

ADMINISTRATIVE

For information of the Bureau, a copy of this report is being disseminated to USA, Nashville, Tenn. This has been done as USA CHARLES ANDERSON, Nashville, stated through conversation with USA, Jacksonville, Florida, he learned [] may possibly ask for change of venue to the Middle District of Tennessee, Nashville.

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Bureau note color photographs have been taken of Cadillac used by subject GIFFE (Deceased) and have been forwarded to Mechanical Section for processing and subsequent dissemination.

The following investigation was conducted by
SAs [] on 10/5/71:

[] (PROTECT IDENTITY), []
[] confidentially advised he was

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ME 164-76

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[REDACTED] stated he desires his comments concerning GIFFE and all of the above be kept strictly confidential. He stated that he has been contacted by Nashville newspapers concerning GIFFE but he has not and will not divulge any of the above to the press. [REDACTED] STATEMENTS SHOULD NOT BE DISCUSSED OUTSIDE THE BUREAU.

- C* -
COVER PAGE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

1 - U. S. Attorney, Jacksonville, Florida
Copy to: 1 - U. S. Attorney, Nashville, Tennessee

Report of: SA [REDACTED]
Date: October 14, 1971

Office: Memphis

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Field Office File #: 164-76

Bureau File #:

Title: GEORGE MALLORY GIFFE, JR. (Deceased);
[REDACTED]
Mrs. GEORGE M. GIFFE, JR. - VICTIM (Deceased)

Character: CRIME ABOARD AIRCRAFT - HIJACKING; KIDNAPING

Synopsis: At approximately 1:59 a.m., 10/4/71, Safety and Security Division, Nashville Metropolitan Airport, Nashville, Tenn., received call from Big Brothers Aircraft (BBA), Inc., Nashville, Tenn., that two men with guns dragged woman on airplane and took airplane by force. Security officers at airport observed airplane take-off from airport approximately 2:00 a.m., 10/4/71. BBA lineman witnessed hijacking of BBA aircraft number 9058-N and two men drove up in Cadillac, restrained woman at approximately 1:45 a.m., 10/4/71, pulled weapons, dragged woman to airplane who screamed she was being kidnaped, forced pilots on airplane and departed approximately 2:00 a.m. Subject GEORGE GIFFE, JR., made arrangements 10/3/71 to charter BBA aircraft to Atlanta, Georgia, at 1:00 a.m. on 10/4/71. Mrs. GEORGE M. GIFFE, JR., left place of employment 1:33 a.m., 10/4/71 at Nashville, Tenn. Subject GIFFE called BBA 1:04 a.m. and 1:20 to 1:25 a.m., advising he would be ten minutes late for charter flight. Co-pilot of hijacked plane, [REDACTED] observed hijack events and he and pilot BRENT DOWNS (Deceased) forced to fly to Jacksonville, Florida. [REDACTED] advised that [REDACTED] relayed instructions from subject GIFFE; woman on plane remained in daze during entire flight. [REDACTED] remained calm until arrived at Jacksonville, Florida, and ordered pilot not to leave aircraft. Subject had no apparent destination and decision to fly to Freeport, Bahamas, suggested by pilot DOWNS. [REDACTED] advised plane may have reached Freeport but told subjects only 30 minutes fuel left after reaching Jacksonville, but knew they had one and a half hours fuel remaining. [REDACTED] stated upon landing

ME 164-76

subject GIFFE ordered plane to depart but pilots said they could not take off from their position and only had 30 minutes fuel left. [] left airplane after [] told pilot to remain. [] heard shots at tires and engine but no others. Apparent suicide letters found in subject GIFFE's Cadillac. [] advised [] left Nashville nightclub 12:00 midnight 10/3-4/71 and [] left car at nightclub. Receipt for down payment for charter aircraft found at subject GIFFE's apartment. Subject GIFFE and victim married 3 years but separated 8 or 9 times. Subject GIFFE had financial problems. Contents of communications from FAA, Nashville and Memphis obtained from copies of tapes. Preliminary hearing for [] set for 10/14/71 at Jacksonville, Florida.

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- P -

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ME 164-76

DETAILS:

Investigation in this case was instituted by the Federal Bureau of Investigation at Nashville, Tennessee, pursuant to information received from [REDACTED] Security Officer, Safety and Security Division, Nashville Metropolitan Airport, Nashville, Tennessee, at approximately 2:15 a.m., October 4, 1971. [REDACTED] advised that his division received information that two men forced a woman out of a car and hijacked aircraft No. 9058-N owned by Big Brothers Aircraft, Inc., Nashville Metropolitan Airport, Nashville, Tennessee.

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I. INVESTIGATION AT BIG BROTHERS AIRCRAFT, INC.,
NASHVILLE, METROPOLITAN AIRPORT, NASHVILLE,
TENNESSEE, REGARDING DETAILS OF HIJACKING AND
RELATED INVESTIGATION

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/12/71

[redacted], Specialist, Safety and Security Division, Nashville Metropolitan Airport, Nashville, Tennessee, contacted SA [redacted] at approximately 2:15 A.M. and furnished the following information:

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[redacted] stated that he was furnished information from other officers of the Safety and Security Division of the Nashville Metropolitan Airport, that two men had just forced a girl out of a car and the two men had guns. [redacted] stated that these two individuals forced the pilots of the plane into a twin engine Hawk airplane owned by Big Brothers Aircraft, Inc., Nashville Metropolitan Airport, and the aircraft bore the numbers 9058-N.

[redacted] advised that the men and the girl drove up to Big Brothers Aircraft hangar in a Cadillac bearing Tennessee license 2N9360. [redacted] advised that the airplane took off from the Nashville Metropolitan Airport a short time ago.

Interviewed on 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76
by SA [redacted] Date dictated 10/8/71

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/12/711

[redacted] employee, Nashville Flight Service, Federal Aviation Administration, Nashville Metropolitan Airport, Nashville, Tennessee, was contacted and furnished the following information after a review of the records in his office:

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A flight plan was filed telephonically by [redacted] for aircraft number 9058-N concerning a flight from Nashville, Tennessee, to Atlanta, Georgia, and return. This flight plan was filed at 12:25 A.M., October 4, 1971. The proposed departure time from Nashville was 1:15 A.M. on October 4, 1971. Time en route to Atlanta was 45 minutes which would make time of arrival at Atlanta 2:00 A.M., Nashville time with four hours of fuel on board. The aircraft was routed on the airways via Chattanooga, Tennessee. The return trip from Atlanta to Nashville had a proposed departure time of 2:15 A.M., October 4, 1971. Time en route was 45 minutes with arrival time at Nashville 3:00 A.M., October 4, 1971. Flight was on the airways via Chattanooga with three and one-quarter hours of fuel on the return trip. Leaving for Atlanta the total personnel on board, including the crew, was four and on the return trip was three.

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76
Jacksonville 164-103

by SA [redacted] Date dictated 10/8/71

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/12/71

[redacted] Captain, Safety and Security Division, Nashville Metropolitan Airport, Nashville, Tennessee, was contacted and supplied the following information:

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[redacted] advised that the Safety and Security Division of the Nashville Metropolitan Airport, Nashville, Tennessee, received a telephone call from Big Brothers Aircraft, Inc. at the Nashville Metropolitan Airport, advising that two men with guns were kidnaping a female and taking an airplane.

[redacted] advised that he conducted inquiries with personnel at Big Brothers Aircraft and determined from them that a man using the name GEORGE GIFFE had made reservations with Big Brothers Aircraft to fly to Atlanta, Georgia.

[redacted] advised that he learned from these individuals that two men pulled up in a Cadillac vehicle, with the motor running, the doors open, and the lights on. [redacted] advised he learned that a man got out of the Cadillac vehicle and one man remained with the girl in the car. The individual getting out of the car showed his credentials to personnel at Big Brothers Aircraft and the woman in the car was apparently screaming words to the effect that she was being kidnaped. The two men later pulled pistols, forced the pilots on the plane, and dragged the woman to the plane. [redacted] advised that he learned that the airplane left without authorization from the Nashville Metropolitan Airport and although the flight was paid for by the man named GIFFE, the aircraft was taken by force.

[redacted] advised that the pilot of the aircraft was BRENT DOWNS, the co-pilot was [redacted] and also there at that time was [redacted] also an employee of Big Brothers Aircraft. [redacted] advised that officers of the Nashville Metropolitan Airport were at the scene at that moment conducting an investigation and had impounded the Cadillac vehicle.

Interviewed on 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76
by SA [redacted] Date dictated 10/8/71

JK 164-103

ME 164-76

2

also advised that he learned that the aircraft utilized by Big Brothers Aircraft had taxi certificate number 65047.-

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FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 10/12/71

[redacted] Captain, Safety and Security Division, Nashville Metropolitan Airport, was contacted and supplied the following information:

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[redacted] advised that the Safety and Security Division of the Nashville Metropolitan Airport received a call from Big Brothers Aircraft, Incorporated at the Nashville Metropolitan Airport at approximately 1:59 a.m. on October 4, 1971. [redacted] advised that personnel from Big Brothers Aircraft told them that two men with guns were kidnaping a female and taking an airplane.

[redacted] advised that he immediately alerted all available personnel and that he, in the company of [redacted] also officers of the Safety and Security Division, proceeded in one vehicle and [redacted] also an officer, proceeded towards Big Brothers Aircraft hanger at the Nashville Metropolitan Airport.

✓ [redacted] advised that when he and the other unit arrived at Big Brothers Aircraft, he noticed that a plane was taxiing to runway #31. [redacted] stated that he immediately pulled up on the right side of the aircraft and the other unit was instructed to pull up on the left side. [redacted] stated that the aircraft braked to a stop just short of the runway and that he pulled up right next to the side of the aircraft. [redacted] observed a flashlight shining through the glass on the right side, which appeared to be in the front portion of the cabin of the aircraft. [redacted] observed that an occupant in the cabin of the aircraft had something that looked like a gun. [redacted] stated that almost as soon as the flashlight shined through the cabin window, the airplane started to move and the plane immediately proceeded on the runway and the plane started to roll on the runway without stopping and proceeded straight down the airstrip, and the plane became airborne.

[redacted] stated that he and the other unit had proceeded down the runway in the event the pilot aborted the aircraft.

Memphis 164-76

Interviewed on 10/8/71 at Nashville, Tennessee File # Jacksonville 164-103by SA [redacted] Date dictated 10/8/71

ME 164-76
JK 164-103

2

✓ [] advised that after this occurred, he proceeded back to Big Brothers Aircraft hanger and obtained information as to the events that had occurred before this.

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b7C

✓ [] advised that while there, he observed a cloth item, which appeared to be of silk, which was approximately 2 feet long and colored, which appeared to be something that a woman might possibly wear around her neck or waist. [] stated that this item was lying approximately 10 feet in front of the car on the pavement, and then he picked up the cloth item and placed it on the hood of the Cadillac vehicle, which was parked beside the hanger of Big Brothers Aircraft. [] stated that the Cadillac appeared to be gold in color and was a 2-door hard-top. [] also stated that he observed some type of knot in the cloth item that he had picked up.

FEDERAL BUREAU OF INVESTIGATION

1Date of transcription October 12, 1971

[redacted] Chief, Airport Traffic Control Tower, Federal Aviation Administration, Nashville Metropolitan Airport, was contacted and supplied the following information:

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[redacted] advised that the Federal Aviation Administration (FAA) received information that a Big Brothers Aircraft Incorporated, airplane was chartered by an individual to fly to Atlanta, Georgia. [redacted] advised that he was aware of circumstances regarding a hijacking at the Big Brothers Aircraft, Incorporated hanger at the Nashville Metropolitan Airport and learned that two individuals arrived at the airport accompanied with a woman, and the woman was apparently screaming that she was being kidnaped. The individuals then forced the pilots on the plane and flew out of the Nashville Metropolitan Airport in an aircraft owned by Big Brothers Aircraft, bearing number 9058-N.

[redacted] advised that the Federal Bureau of Investigation had been alerted in Washington, and that as soon as it was determined that this aircraft intended to go to Jacksonville, Florida, the FBI was notified there.

[redacted] advised that he received information that the aircraft may have had a possible range of 900 miles with the fuel that it carried and may have flown for approximately 4 hours and 30 minutes.

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76
Jacksonville 164-103
by SA [redacted] Date dictated 10/8/71

FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 10/12/71

[redacted] Sergeant, Nashville Metropolitan Police Department, Nashville, Tennessee, supplied the following information:

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[redacted] stated that he was conducting investigation at the Nashville Metropolitan Airport and had impounded a Cadillac vehicle bearing Tennessee license 2N-9360, which was apparently abandoned by some individual who arrived at the Nashville Metropolitan Airport and shortly thereafter hijacked an aircraft owned by Big Brothers Aircraft, Inc., at the Nashville Metropolitan Airport. [redacted] stated that he learned from the Nashville Metropolitan Police Department that an individual identifying herself as [redacted] had telephonically contacted the Nashville Metropolitan Police Department and had advised that her daughter is on a plane believed to have departed the Nashville Metropolitan Airport.

Later [redacted] stated that he had telephonically contacted a [redacted] and advised that she believed her daughter might be on a plane which had departed the Nashville Metropolitan Airport. [redacted] advised that [redacted] told him that her daughter, Mrs. GEORGE M. GIFFE, was having family problems with her husband. [redacted] said that [redacted] told him that he is the head of Global Realty Company and lives at the Bavaria Apartments on Packer Drive, Apartment J-11.

[redacted] said that [redacted] told him that GIFFE is a professor at Peabody College. She told him that GIFFE apparently had all kinds of weapons and might be carrying a Walther PP-K. [redacted] told him that Mr. GIFFE says that he has a permit to carry a gun and that he always talks about the Mafia. [redacted] told him that GIFFE had called her and said that he had money for his wife and was going to leave the country. [redacted] told him that her daughter, SUSAN, had been married to GEORGE GIFFE approximately three years and that SUSAN graduated from George Peabody College.

[redacted] stated that after he had arrived at the Big Brothers Aircraft, Inc., hangar, he conducted investigation outside the hangar and in the area of the Cadillac which had

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76
Jacksonville 164-103

by SA [redacted] Date dictated 10/8/71

ME 164-76

2

been parked there. [] advised that he found lying on the hood of the Cadillac a multicolored belt which was apparent to him to be that of or used by a woman. [] noted that there was a tight knot tied in the belt material. [] stated that this belt garment was placed in the vehicle just prior to its being transported to the Nashville Metropolitan Police Department tow-in lot, where it was impounded.

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/12/711.

Examination was made of a 1970 Cadillac two-door Coupe DeVille at the Metropolitan Police Impound Lot. This vehicle, gold in color with a black vinyl top, was noted to have 1971 Tennessee license 2N9360. The Vehicle Identification Number was noted to be J021742.

This vehicle, having a gold colored interior, was noted to be equipped with power steering, power brakes, air conditioning, automatic transmission, power windows and six-way power seat and AM-FM radio.

Within this vehicle a woman's sash was noted to be lying in the back seat which sash was noted to be approximately two and one-half inches in width and approximately four feet long. This sash is multi-colored having the colors white, blue and gold in irregular pattern thereon. This sash was retained as having possible evidentiary value.

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76
by SA and SA Date dictated 10/8/71
b6
b7C

FEDERAL BUREAU OF INVESTIGATION

Date of transcription October 8, 1971

Lieutenant [redacted] Criminal Identification b6
b7C
Division, Metropolitan Police Department, Nashville,
Tennessee, advised as follows:

On October 4, 1971, officers of the Metropolitan Police Department conducted a search of the 1970 Cadillac automobile owned by GEORGE GIFFE, JR., which had been abandoned by GIFFE at the Metropolitan airport on the early morning of October 4, 1971, and which had been impounded by the Metropolitan Police Department at the Metropolitan Tow-In Lot, Fifth Avenue North, Nashville, Tennessee.

As a result of the search of the car, several letters were found, described as follows:

Letter addressed "Dear Susan" with the following message:

"Dear Susan

"Please, please keep from being so bitter as directed by your mother. I have always loved [redacted] and I better than anybody know what she has been through with [redacted] - I have always been her friend and she has always been so thoughtful with my little mother and father. When I had to be out of town on mother's birthday you and [redacted] just made her day by coming over. It is a very bad thing to get so mad that mean and cruel things are said about one's parents. I would never do anything to hurt you or [redacted] feelings. I have always given you and [redacted] the best advise - leady you both to [redacted] because he takes such good care of my family, and your family became mine.

"I have never loved anything in life the way I love you from the black residue in the corner of your eyes to the cramps you get from menn. There is not a 'chicken pox' scar that I haven't kissed at least a million times. No woman has ever been loved or cared for more than I love and cared for you. I feel each pain and know each joy - there

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] SA [redacted] WMH:LFM Date dictated 10/7/71

is no one that I'd rather purchase a gift for. I love and adore the look in your eyes when some little thing meets with your powerful approval. A thrill runs through me when something I do is OK, approved. Susan, please analysis has anyone ever tried so hard to please you more and anytime things happen that I cannot help or control you and [redacted] descend on me with heavy abusive criticism. if I were not a strong man I could not take it.

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"Because I am a man I cannot turn my back on what I owe! I do not intend to bankrupt I shall pay it all - every last cent no one will loose. You must realize that I cannot hope to fulfill this feat! on a salary-. You and I have had tight moments but we never did without food and shelter - I always maintained a good standard of life even under adverse circumstances. People have run out leaving me with the bag to hold and hold it I shall. No greets no blue chips. That night that [redacted] was so daring due to drink and you stood with me it meant so much - to feel you hug me so tight and say 'George, I will never leave you you always have my love and care?' 'Why are people so cruel.' When I say these words in my mind's eye tears well up in my eyes. Because you have always been my personal property and my little girl many times I did not share my great problem and heart aches. - not because I did not love you - but because I loved you so much I could not bare to have you hurt by my problems. But, you see Susan, you are capable of helping me by know! The world is tough and mean as I am sure you know by now in your employment etc. I do not want anything or anyone to ever hurt you - God only knows what I have gone through without your precious presence. You can say anything about me but you know that I have always thought of you first. I could never bare to see you sick or hurt - as to your jewelry each piece was carefully selected and purchased by me for my special girl my love my life my precious wife. Yes, look up and see the man looking at you as you take his money - He and they will never love you the way I do or as completely as I do. You could run a blade through my heart and I would kiss you with my dying breath! You know this is true! Only you can make me happy or ever satisfy me! There is no other face or smile that exist in my world or beyond my world except you. Susan, you love me and you always have but I also love you and nothing shall ever take this love from me.

ME 164-76

3

"Susan, our life has been good and full of many pleasures but you must remember life is not all pleasure it is made up of stay power like the night you held me so tight and cried with me in my disappointment over [] The cologne that you bought me because 'it was as close to "Spain" "Manzella" as I could get.' Yes the record of SUMMER OF '42 and the Saturday and Sunday 'Steak biscuits' with eggs. The long walks in the woods 'Little Harpth.' The late night calls when I was in Atlanta - me getting to the airport (2) two hour early just because I missed and loved to have you with me. The thoughtful things you did for me: being with me when I was troubled. Us laying in bed with your legs over mine and reading our little funky newspapers. the late night milk shakes that you did not want but always seemed to drink! The care with which each of us prepared food for each other - our spotless little kitchen the way you make the beds or clean the bathroom to excellence.

b6
b7C

"Susan, I love you! and I know the late night and early mornng pains of loanlness with each other! Who, really cares for each other the way you and I do - when we both had the Flu we both loved and took good care of each other through it all. No woman in your family ever had a man who gave her so much so carefully selected or so much of himself.

"Life is made up of small comings and goings. And for everything we take with us, there is something we leave behind.' SUMMER OF 42 I wished I had written these words - but I have written words of similar calober to you.
THINK, THINK, THINK, THINK WHAT WE MEAN TO EACH OTHER AND OUR
PRECIOUS RELATIONSHIP AND HOW WE BELONG TOGETHER ALWAYS!

"With all my love and devotion

"Your loving husband

"P.S. [] God Bless Her For Not upsetting My Father He
Has So Much On His Soul"

An envelope bearing the word [] and
containing the following letter:

ME 164-76

4

"Dear gentle []

"It goes without saying that you are the noblest of men. Without your support I could not have held the line.

b6
b7c

"Susan is a love that I never knew with any other woman - she is beyond words. My love and devotion to her is beyond my own likes and love for myself.

"She is the only woman I could ever be with body and soul. My nights and days without her recently have been beyond my ability to stand. And now that I have been given the order - it is I too who must parish - because you see without her life does not exist.

[] please realize I know that I have been here before and will come again. It seems that the Gods like to play this actor upon the stage of earth. I know no fear except I cannot take her without take me, because you see with each breath she takes my heart beats with hers.

"She has been my constant love all my life - I have searched for her throughout my life. Because she loves me so she wanted to know more about me than she should, and she could not handle the information. My people are good and just but cannot let me or anyone expose what we know and what we are. When the order came down it was mine to handle.

[] will be in touch with you concerning the Swiss accounts - I hope that the money can do some good - I spent many tight moments earg it.

[] phone []
[] and tell that beautiful blond I love her too. Crazy little girl I knew for a brief moment.

"Well [] - my accident (suite) will pay a large portion of my debts (Domestic). More money will come in soon.

"All my love and
Regards

"G. G."

ME 164-76

5

Envelope addressed to [redacted]

Attention: [redacted]

b6
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[redacted] and enclosed in this envelope was the following letter:

"Dear [redacted]

"When you read these lines I will be at a point of no return. Please understand that a man must make a decision which he sometimes does not want to make. But this one was an order! I enjoyed the gentle girl I knew and held in my arms for a short time. Because of you I had many joys and a great time in Atlanta. Your love and because you cared has meant much to me.

"Remember: 'Life is made up of small comings and goings. And for everything we take with us, there is something we leave behind...' The Summer of 42. Burn this letter after you read it.

"Much love,

"I step into tomorrow!

"George"

Envelope addressed to Lt. Col. George M. Giffe, Jr., 324 Gaywood Drive, Nashville, Tennessee, and containing the following letter:

"Dearest Dad

"I love you with all my heart and Soul - no words can really describe my pride and devotion to you. You were a brave sincere soldier to the greatest country in the world. Susan because she knows too much about me and what I have done in the past - I have been given the order to silence with most haste - but Dad it isn't easy because you see she is my life - my breath - my sunshine. To execute this order is to kill myself also. I cannot do the one without doing the other.

"Keep up that strong 'beach head' approach and I will do the same. God bless my mother and take care of her. 'There is a vast no man's land between the sons of darkness and the sons of light.' If the tapeworm kills the host he is dead also.

ME 164-76

6

"Burn this
letter after
you read it

"With my deepest love
and devotion

"Your Son

P.S. I lived
before I shall
live again!"

A portion of a sheet of white paper bearing the
message [] phone [] at [] tell her goodbye for me;
she will understand."

b6
b7C

Two address books, black in color, containing the
names, addresses, and telephone numbers of numerous individuals
and business concerns.

The originals of the above letters were furnished
to SA [] by Lt. [] on October 4,
1971.

FEDERAL BUREAU OF INVESTIGATION

1

Date 10/12/71

[redacted]
[redacted] employed as a lineman for Big Brothers Aircraft, Inc., Nashville Metropolitan Airport, Nashville, Tennessee, was contacted and supplied the following information:

[redacted] was displayed a multi-colored, silk garment approximately 2 to 3 inches wide containing a tight knot.

[redacted] advised that this silk garment looked very much similar to the white belt that he observed on the woman who was dragged aboard a Big Brothers Aircraft in the early morning hours of October 4, 1971. [redacted] advised that he could not positively identify this as the item that he previously observed as he had observed it from some distance.

b6
b7C

On 10/7/71 at Nashville, Tennessee File # Memphis 164-76
by SA [redacted] Jacksonville 164-103
SA [redacted] Date dictated 10/8/71

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FEDERAL BUREAU OF INVESTIGATION

1Date 10/12/71

[redacted] home residence [redacted]
[redacted] was contacted and provided the following information:

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[redacted] was displayed a multi-colored, cloth garment, approximately 2 to 3 inches wide, containing a tight knot. [redacted] after observing this garment, advised that he is not certain whether or not this is the white object that he observed, which he first thought was a sanitary belt, in the early morning hours of October 4, 1971, which was observed between the woman's knees and ankles when a hijacking was committed at Big Brothers Aircraft, Inc., at Nashville Metropolitan Airport.

[redacted] stated that due to the distance that he observed the white object, as the woman was struggling with another individual, he could not be certain or positive that this was the object.

On 10/7/71 at Nashville, Tennessee File # Memphis 164-76
Jacksonville 164-103

by SA [redacted] Date dictated 10/8/71

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/7/711

[redacted] Chief, Federal Aviation Administration, General Aviation Offices, Nashville Metropolitan Airport, was contacted and furnished the following information regarding BRENT QUINTON DOWNS:

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DOWNS was pilot rated on August 15, 1967, instructor rated on June 27, 1968, and transport aircraft rated on October 1, 1970.

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted]
SA [redacted]

Date dictated 10/6/71

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/7/71

1

[redacted] Big Brothers Aircraft, made available company records of BRENT QUINTON DOWNS from which the following descriptive information was taken:

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Name	BRENT QUINTON DOWNS
Race	White
Sex	Male
Date of birth	February 26, 1942
Place of birth	Shelbyville, Tennessee
Height	5'7"
Weight	140
Social Security No.	410-66-1642
Current residence	[redacted]
Military service No.	14772733, U. S. Air Force
Military service	U. S. Air Force, September 18, 1961, through September 19, 1965; honorable discharge; electronics technician
Marital status	Married
Wife	[redacted]
Children	Son, one year old
Education	Eastside Grammar School and Shelbyville Junior High School, 1949 through 1957; Shelbyville Central High School, 1957 through 1961; Memphis State University, 1965 through 1967
Employment	From September, 1965, through December, 1965, Paul's TV, Memphis, Tennessee (radio and television repairman); from January, 1966, to August, 1967, City of Memphis (blood bank technician); from September, 1967, through January, 1968, Memphis Flying Service (flight instructor)

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] Date dictated 10/6/71

ME. '164-76

2

Past residences

1210 Vultee Boulevard, Nashville, Tennessee; 736 North Trezevant, Memphis, Tennessee; 1438 Finley Street, Gulfport, Mississippi

ME 164-76

On October 4, 1971, [redacted] Clerk, Central Records Division, Nashville Metropolitan Police Department, advised that 1971 Tennessee License 2N9360 is listed to GEORGE M. GIFFE, JR., residence 4501 Packard Drive, for a 1970 Mercury Cougar. Vehicle Identification Number OF91M5264119. [redacted] advised that National Crime Information Center and her records are negative regarding stolen report. b6 b7C

II. DETAILS OF CHARTER OF BIG BROTHERS AIRPLANE
AND INVESTIGATION OF ACTIVITIES OF SUBJECTS
GIFFE and [redacted] on 10/3/71 PRIOR TO HIJACKING

FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 10/8/71

[redacted] an employee of Big Brother Aircraft, was contacted at his place of employment, advised of the identity of the interviewing Agents, and advised that he was to be interviewed concerning the aircraft hijacking that occurred at Big Brother Aircraft on the night of October 4, 1971. [redacted] at this time, furnished the following signed statement:

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"Place: Nashville, Tenn.
Date: Oct. 6, 1971

"My name is [redacted] and I reside at [redacted]

[redacted] have identified themselves to me as Special Agents of the Federal Bureau of Investigation. I would now like to furnish the following statement which I understand is voluntary on my part.

"I am employed by Big Brother Aircraft, Inc., and on Oct. 3, 1971 I was on duty and at approximately 2:30 PM I received a telephone call from a male individual, who did not identify himself, and made inquiry about making a charter flight to Atlanta, Ga. possibly later on in the evening.

"I furnished the man the type of aircraft available and the price for each aircraft. The man asked about chartering a twin engine type aircraft and I advised him that all of our aircraft were twin engined, and he asked for a price on our cheapest aircraft, which I did give him.

"After receiving the price quotation the man said I possibly might want to take it later on this afternoon. I advised the man to let me know when he desired to leave so I could have a pilot & the aircraft ready. We thereafter terminated our conversation and I thought no more about the inquiry, as we receive many such calls.

"At about 5:00 or 5:15 PM I observed [redacted] and a white male, who was approximately 5' 10" or 6' in height, weighing about 250 to 275 pounds, with a very heavy build, going into the main hangar.

"About 30 minutes later I met [redacted] at the front

Interviewed on 10/6/71 at Nashville, Tennessee File # Memphis 164-76

SA [redacted]
SA [redacted]

by

Date dictated 10/7/71

ME 164-76

2

desk, and at this time [] advised me that the man was the fellow that had called about the charter trip to Atlanta, Ga. [] said he had shown the man all the available planes for charter, and had left two one hundred dollar bills as down payment for the charter.

b6
b7C

[] stated that he had talked to [] a pilot, concerning the flight, and that the charter was tentatively set for 1 AM in the morning, and nothing else was said about the flight.

"At about 9:30 PM, I observed the man who I saw earlier with [] standing at the main counter talking (to) [] I also observed a gold colored Cadillac parked at the end of the hangar.

"Some 10 minutes later I observed the gold Cadillac in the main hangar. I noticed a Hawk Commander Aircraft near the Cadillac with the door open, and I saw a clothing bag laid in the aircraft over one of the seats. I did not see the man who I observed at the front desk in the vicinity of the car or airplane.

"At about 9:45 or 9:50 PM, [] called me and advised that from the weather situation, foggy conditions, he would have to use the Hawk, and if I heard nothing further I was to have the Hawk out and 'topped off' at about 12:00 AM.

"I advised [] that the man had paid [] the balance due for the charter.

"At approximately 11:00 PM, while cleaning my car at the south end of the hangar I observed the man, previously described, walking through the hangar toward the south-east corner of the hangar. I knew [] were in the area fueling an aircraft and the man walked around the fuel truck out of my sight, and this was the last time I observed this man.

"At about 11:45 PM I left the area, and I did not observe this individual again & no mention was made of any conversation of the man with [] to the best of my recollection.

ME 164-76

3

"I have read the above statement consisting of this and four other pages and it is true to the best knowledge.

"Witnesses

/s/

/s/

/s/

SA, FBI, Nashville, Tenn. 10/6/71

SA, FBI, Nashville, Tenn. 10/6/71"

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FEDERAL BUREAU OF INVESTIGATION

1.

Date October 12, 1971

[redacted] home residence [redacted]
[redacted] employed as a lineman for Big Brothers Aircraft, Inc., Nashville Metropolitan Airport, Nashville, Tennessee, was interviewed and advised he would be willing to furnish a signed statement regarding his knowledge of an individual known as GEORGE GIFFE making charter arrangements for a Big Brothers aircraft on October 3, 1971.

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[redacted] supplied the following statement:

"Place: Nashville, Tennessee
Date: October 6, 1971

"My name is [redacted] I reside at [redacted]
[redacted] have identified themselves to me as Special Agents of the Federal Bureau of Investigation. I would now like to make the following statement, which is voluntary on my part.

"I am employed by Big Brothers Aircraft, Inc., (BBA) Nashville Metropolitan Airport, Nashville, Tennessee as a lineman.

"On October 3, 1971, a Sunday, I was on duty at B.B.A. from 8:00 AM to 9:30 PM. Sometime during either the morning or afternoon a lone man arrived in the office and identified himself as George Giffe. This man was a white male, about 30 years old, dark curly hair, about 6 feet tall weighing about 230 - 240 pounds.

"Mr. GIFFE claimed to have previously called B.B.A. concerning a charter flight to Atlanta. I had received no information concerning this flight and Mr. Giffe quoted the price given him.

On 10/6/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76

by SA [redacted] SA [redacted] Date dictated 10/8/71

ME 164-76
JK: 164-103
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"I compared the quoted price with our rates and determined Mr. Giffe apparently chartered an Aztec airplane. [] also a B.B.A. employee, took Mr. Giffe out on the ramp and showed him the Aztec airplane. Mr. Giffe said he didn't want the Aztec and [] showed him a Shrike and a Hawk Commander that were located in the hangar. Mr. Giffe selected the Shrike and I began preparing the price for the charter. [] called one of the pilots and learned the Shrike was not in operating condition. Mr. Giffe then said he would charter the Hawk Commander.

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"Mr. Giffe told me that he would be traveling to Atlanta with an architectural associate. Giffe also told me that he and his associate would be left at Atlanta and another passenger would return from Atlanta to Nashville. Prior to chartering the Hawk Commander, Mr. Giffe inquired as to the luggage capacity of some of the aircraft. Mr. Giffe apparently was satisfied with the luggage capacity of the Hawk Commander.

"I computed the price of the charter and quoted the price to Mr. Giffe as \$387.00 excluding tax.

"Mr. Giffe walked around the area until the charter was confirmed with the pilot. Mr. Giffe then paid me \$200.00 down payment on the charter price. I gave him a receipt for the \$200.00 and Mr. Giffe left saying he would return at 1:00 A.M. on October 4, 1971 for his trip to Atlanta.

"Mr. Giffe also asked me if there were any objections to his drinking scotch on the airplane. I told him there were no objections as long as no one was drunk.

"Mr. Giffe returned to B.B.A. just prior to 9:30 PM on October 3, 1971. He told me he wanted to pay the balance of the charter in cash. Including federal tax I told Mr. Giffe the total price was \$417.96. He gave me two 100 dollar bills and a twenty dollar bill and I gave him three dollars discounting the ninety six cents for paying cash. I noticed when he paid me that he had a large quantity of money, either in his wallet or a roll of money he took from his pocket.

ME 164-76
ME 164-103
3

"Mr. Giffe told me that he wanted to load some things onto the chartered airplane. At this time he also told me he wanted the airplane out and ready to go by 1:00 AM on October 4, 1971.

"I went to the hangar and opened the door to let Mr. Giffe drive his automobile into the hangar next to the airplane. I observed that he was driving a 1971 or 1972 tan Cadillac vehicle.

"At Mr. Giffe's direction I placed a black attache case near the front of the Hawk Commander airplane number 9058-N. He also handed me a small blue color metal box that had a three wheel combination device on the front of the box. He told me the box contained "architectural renderings," and he requested this box be placed near the front of the airplane. He also handed me a garment bag and requested that I place this bag in the luggage compartment.

"I told Mr. Giffe, that the bottom of the black attache case was wet and he told me the case contained ice. I told him that there were facilities for ice already on the airplane.

"I left Mr. Giffe alone in the hangar and at this time he was on his knees looking in the airplane. I returned to the office; clocked out and went home.

"I recall that when Mr. Giffe was making the final payment for the charter he asked me the range of the airplane. I told him I did not know and [redacted] next to me said he didn't know either but the plane cruised at 285. b6 b7C

"Later in a Nashville newspaper, I saw a photograph of George Giffe, Jr. and I immediately recognized this man as the same man for whom I had arranged the charter flight to Atlanta.

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JK 164-103

4

"I have read this statement, consisting of this and four other pages. I have initialed each page and this statement is true and correct.

"Signed

[Redacted Signature]

"Witness: [Redacted] Special Agent, FBI, 10/6/71.
"Witness: [Redacted] SA, FBI 10/6/71."

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b7C

FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 10/8/71

[redacted] an employee of Big Brother Aircraft, was contacted at his place of employment, advised of the identity of the interviewing Agents, and advised that he was being interviewed concerning the aircraft hijacking that occurred at the Big Brother Aircraft on the night of October 3, 1971. At this time [redacted] furnished the following signed statement:

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b7C

"Place: Nashville, Tenn.
Date: Oct. 6, 1971

"My name is, [redacted] and I reside [redacted]

[redacted] have identified themselves to me as Special Agents of the Federal Bureau of Investigation. I would now like to furnish the following statement which is voluntary on my part.

"I am an employee of Big Brother Aircraft, Inc., and on Oct. 3, 1971 I was on duty at Big Brother Aircraft, and at about 5:00 PM I entered the front counter area and I observed a white male, who had short black curly hair, weighing 225 to 250 pounds, heavy build, dressed in casual type clothing, conversing with [redacted]

"I walked to the front window and was looking out and while doing so overheard this man and [redacted] discussing a charter flight.

"The man turned to me and asked where the plane was located, and I told him it was setting outside the hangar. He asked me to show him the aircraft, which I did, and he observed the aircraft, a Piper Aztec, and he said do you have anything else.

"We turned around and walked back to where the "Shrike" was parked, and while walking I advised him of the charter price and he stated it did not matter he would take the "Shrike".

"As we were about to enter the office the man, who at this time had not identified himself to me, asked how much

Interviewed on 10/6/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] In [redacted] Date dictated 10/7/71

ME 164-76

2

luggage does it hold, and I showed him the luggage compartment.

"We re-entered the office and I called [redacted] a pilot, and advised [redacted] that we had a gentleman who wished to charter a flight to Atlanta, Ga.

b6
b7c

"The man advised that he would get off at Atlanta and another man would get on the aircraft and return to Nashville and he, the man, would remain in Atlanta.

"This man then talked over the telephone to [redacted] and told him of his plans, and that the charter would be paid for in cash.

"After the above conversation the man paid a \$200.00 deposit to [redacted]

"I do not remember if the man departed the area or I departed the area, but I did not see him again until about 6:30 or 6:45 PM when I saw him getting into a tan colored Cadillac and backing it out of the north end of the hangar. [redacted] thereafter advised me the man had paid for the complete charter.

"At about 9:30 PM this man appeared at the hangar and walked to where [redacted] and I were standing and asked how are you doing and asked what aircraft are we going in. I advised that his flight would be in 'The Hawk'. He then replied 'OK', will it be ready at 1:00 AM sharp, and I replied yes. The man then turned about and walked northward into the hangar.

"A short time later [redacted] and I passed by 'The Hawk' and I observed a black garment bag laying on the 'potty seat' just inside the door. [redacted] and myself checked to see if the man's car was in the area and it was not observed in the area.

"I recall that this man's name was George Giffe when he identified himself to [redacted] when he made a \$200.00 deposit on the charter flight.

"At about 1:45 or 2:00 AM I observed the car Giffe had driven earlier in the night coming into the area of the Big Brother hangar. I did not observe the number of occupants or who was driving the car. Shortly thereafter I went to the rest room.

ME 164-76

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"Upon exiting the rest room I saw [] running through the hangar and yelling, but I could not understand what he was yelling.

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[] and I then met [] in the office and he advised us that two men had held guns on Brent and [] and some girl was forced onto the plane. Prior to pulling guns the two men flashed their wallets and said they were doctors.

"I ran out of the office and saw the car sitting near the northwest corner of the hangar with the engine running, head lights on and the left front door was open. I looked and observed the aircraft taxiing to the runway and thereafter proceeded to take off.

"Prior to the aircraft's take off I observed two security vehicles with flashing blue lights. I believe only one had on the light, following the aircraft to the runway and at one point one vehicle circled in front of the aircraft but pulled away prior to take off.

"Also prior to the take off I heard [] over the radio filing for an "IFR" to Atlanta.

"I also observed a Metro P. D. unit pick up what appeared to be a white scarf and lay it on the hood of the Cadillac.

"I have read this statement consisting of this and five other papers and it is true to the best of my knowledge.

/s/ []

Witness: /s/ [] S.A. FBI
Nashville, Tenn. 10/6/71
/s/ [] S.A., FBI
Nashville, Tenn., 10/6/71"

FEDERAL BUREAU OF INVESTIGATION

1.Date October 8, 1971

[redacted] Cashier, King of the Road, Nashville, Tennessee, advised she worked with SUSAN GIFFE at the King of the Road Motor Hotel in Nashville, Tennessee.

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[redacted] advised that a few minutes after 4:00 P.M. on October 3, 1971, SUSAN received a telephone call from her estranged husband, GEORGE. [redacted] stated she overheard SUSAN's part of the conversation and heard SUSAN attempt to avoid any further discussion with her husband on the telephone by telling him several times that they had nothing to talk about and she had to return to work. [redacted] stated SUSAN was unable to terminate the conversation so she finally agreed to meet her husband when she terminated her work at approximately 1:00 A.M. on October 4, 1971. She stated SUSAN told her husband that she would meet him "right beside it", which she assumed to be beside SUSAN's car which was parked by the side of the motel.

[redacted] stated she worked with SUSAN until 4:30 P.M. when she ([redacted]) went off duty. [redacted] stated she returned and worked with SUSAN from 8:30 to 10:00 P.M. and then talked with SUSAN by telephone at approximately 11:30 P.M. when SUSAN called to make an inquiry about the method of handling some of her work. She stated SUSAN did not appear upset or concerned during these periods of time.

On 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
SA [redacted] Date dictated 10/6/71
by SA [redacted] Date dictated 10/6/71

FEDERAL BUREAU OF INVESTIGATION

1.Date October 8, 1971b6
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[redacted] manager, King of the Road, Nashville, Tennessee, advised SUSAN GIFFE was employed at the King of the Road Motor Hotel as a desk clerk and was so engaged on the night of October 3 - 4, 1971. [redacted] advised that SUSAN had clocked out from her desk job at 1:33 A.M. on October 4, 1971. [redacted] advised that on the morning of October 4, 1971, he observed SUSAN's car parked where she had parked it the night before when she came to work, which was on the north side of the motel.

On 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76

by SA [redacted] Date dictated 10/6/71

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FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 10/12/71

[redacted] home residence [redacted]
[redacted] was contacted and supplied the following information:

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[redacted] advised that [redacted] MRS.
GEORGE M. GIFFE, JR. (SUSAN), is described as follows:

Sex	Female
Race	White
Date of birth	November 6, 1945
Age	25 years
Place of birth	Nashville, Tennessee
Height	5'6"-5'7"
Weight	130 pounds
Eyes	Brown
Hair	Long and brown
Complexion	Medium
Scars and marks, miscellaneous	Chicken pox marks on forehead; Slight scar under right jawbone; wears diamond cluster ring on right hand and large diamond shaped ring with silver band on left hand.
Wearing apparel	Last wearing beige and blue long-sleeved dress.

[redacted] advised that she received a telephone call from [redacted] MR. GEORGE M. GIFFE, JR. at approximately 9 p.m. on October 3, 1971. [redacted] stated that by agreement, [redacted] had been separated and that [redacted] had been living with her at this time, after being separated approximately 1 week. GIFFE, at this time told her that he wanted to meet his wife after work and GIFFE told her that he was leaving the country and wanted to give her money and his car.

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76 Jacksonville 164-103

by SA [redacted] Date dictated 10/8/71

ME 164-76
JK 164-103
2

[redacted] stated that she telephonically contacted [redacted] who worked at the King of the Road Motor Hotel in Nashville, and [redacted] told her that she would be home at approximately 1 a.m. on October 4, 1971.

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[redacted] stated that a [redacted] did not return home shortly after 1 a.m. on October 4, 1971 and overheard on a Nashville Metropolitan Police Department radio monitor a license number which she recognized as that of [redacted] GEORGE M. GIFFE, JR. [redacted] stated that she then contacted the Nashville Metropolitan Police Department.

[redacted] stated that [redacted] was a former professor at Peabody College and has claimed to have been associated with the CIA. [redacted] described [redacted] as follows:

Race	White
Sex	Male
Height	Approximately 6'
Weight	250 pounds
Hair	Short, black, curly
Facial characteristics	Round face, ruddy complexion
Date of birth	July 7, 1936
Place of birth	Chattanooga, Tennessee.

[redacted] stated that [redacted] father was a retired Army Colonel and a former Veterans Administration attorney.

[redacted] advised that [redacted] was married on December 22, 1968 and had lived at the Bavaria Apartments (#J-11) on Packard Drive.

[redacted] stated that [redacted] had previously been separated approximately 8 or 9 times by agreement and the last time has been for approximately 1 week.

[redacted] said that she feels [redacted] must have met [redacted] at the King of the Road Motor Hotel, where she worked. [redacted] said that [redacted] would definitely not accompany her husband.

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JK 164-103

3

✓ [redacted] advised that she recalls [redacted] has made some reference to Fernandina Beach and may possibly have an associate named [redacted] and that there may be a cottage at Fernandina Beach. [redacted] advised that [redacted] may have a Lear jet airplane. [redacted] also said that last week [redacted] mentioned the name [redacted] (phonetic).

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FEDERAL BUREAU OF INVESTIGATION

1Date 10/12/71

[redacted] home residence [redacted]
[redacted] was contacted and supplied the
following information:

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[redacted] advised that [redacted] Mrs. GEORGE M. GIFFE, JR., (SUSAN) and [redacted] GEORGE M. GIFFE, JR., have been having marital problems. [redacted] stated that GIFFE has not been working for the past three years and that prior to that, was a professor at George Peabody College for approximately six years.

[redacted] advised that [redacted] has M-2 Carbiners and has some type of camouflage equipment in his possession, although he has never been in the Military service.

[redacted] advised that [redacted] might possibly suffer from malaria attacks, which occur every two or three months.

[redacted] advised that [redacted] is a neurotic, a psychopathic liar, and a deceiving individual and associates with [redacted]
[redacted]

[redacted] advised that he learned that [redacted]
[redacted] said that he is leaving the country.

[redacted] said that during the attacks that he suffers, he mentions the name [redacted] who is in the Air Force in Washington, D. C., and that [redacted]
[redacted] also talks of missile bases in Spain.

On 10/4/71 at Nashville, Tennessee File # Memphis 164-76
Jacksonville 164-103

by SA [redacted] Date dictated 10/8/71

FEDERAL BUREAU OF INVESTIGATION

1

Date 10/12/71

Mr. GEORGE M. GIFFE, SR., home residence 324 Gaywood Drive, Nashville, Tennessee, was contacted and supplied the following information:

Mr. GIFFE advised that his son, GEORGE M. GIFFE, JR., is described as follows:

Race:	White
Sex:	Male
Date of birth:	July 11, 1936, Chattanooga
Height:	6'0"6'1"
Weight:	Approximately 280 lbs.
Hair:	Black, curly

Mr. GIFFE advised that his son came in town last evening and said that he would be out of the city for several days. Mr. GIFFE stated that he knew that his son and daughter-in-law, SUSAN GIFFE, were having domestic problems.

Mr. GIFFE stated that he had no idea who any associates of his son might be.

Mr. GIFFE stated that his son now drives a late model Cadillac and had previously owned a Mercury Cougar vehicle. Mr. GIFFE stated that his son purchased the Cadillac on a trade-in in Chattanooga, Tennessee. Mr. GIFFE stated that his son was discharged from the Air National Guard in Nashville, Tennessee for some type of emotional problems but to his knowledge did not know what they were and felt that his son was alright.

Mr. GIFFE advised that his son has recently been involved in some type of financial problems and had a large amount of AL Hirt Securities that went bad on him. Mr. GIFFE advised that his son had an auto accident on July 16, 1970 and was laid up in the hospital for a long time. Mr. GIFFE stated that his son was also in the real estate business.

On 10/4/71 at Nashville, Tennessee File # Memphis 164-76
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by SA Date dictated 10/8/71

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Mr. GIFFE stated that his son taught at George Peabody College for approximately five years and received a Bachelor of Science Degree and Masters Degree in Biology.

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III STATEMENT OF LINEMAN,
BIG BROTHERS AIRCRAFT, INC., EYEWITNESS
TO HIJACKING

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FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 10/12/71

[redacted] home residence [redacted] employed as a lineman, Big Brothers Aircraft, Inc., Nashville Metropolitan Airport, Nashville, Tennessee, was interviewed and stated that he would furnish a signed statement regarding his knowledge of a hijacking of a Big Brothers aircraft which occurred at Nashville, Tennessee, on October 4, 1971.

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[redacted] furnished the following statement:

"Place: Nashville, Tennessee

"Date: October 6, 1971

"My name is [redacted] and I'm also known as [redacted]
[redacted] I reside at [redacted]

[redacted] have identified themselves to me as Special Agents of the Federal Bureau of Investigation and I would now like to furnish the following voluntary statement:

"I am employed as a lineman for Big Brothers Aircraft, Inc., Nashville Metropolitan Airport, Nashville, Tennessee.

"I arrived at work at the Hangar of Big Brothers Aircraft (B.B.A.) at approximately 12:10 AM C.D.T. on October 4, 1971, a Monday morning. [redacted] also employed as linemen for B.B.A., told me a chartered flight had been scheduled for 1:00 AM on October 4, 1971. I was told the destination of the charter flight was Atlanta and that the airplane should be completely full of fuel. [redacted] told me that the airplane should definitely be ready by 1:00 A.M. on October 4, 1971 as the customer had requested this.

"I recall that Brent Downs, the scheduled pilot for this charter, arrived at BBA, a few minutes after I did. I came across the hangar, and said hello to Mr. Downs after I clocked in on the time clock.

Interviewed on 10/6/71 at Nashville, Tennessee File # Memphis 164-76
by SA [redacted] SA [redacted] Date dictated 10/8/71
SA [redacted] Jacksonville 164-103

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"I began to pull the Hawk Commander airplane, having number 9058-N, out of the hangar and to the front of the building. At this time I noticed [] co-pilot for this charter, had arrived.

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"I disconnected the tow and went to the rear of the hangar and met a female acquaintance. I informed her I had a charter to get out and wait until 1:00 AM or 1:15 AM. I then drove the tug to the front of the building and got a flashlight. I had asked [] to assist me in fueling the Hawk Commander.

"I recall that before going behind the rear of the hangar, Mr. Downs gave me a fuel load of completely fueled inboard and twenty-five gallons in each outboard.

"I fueled the Hawk Commander and the total amount of fuel I put in was 148 gallons, which does not include the fuel already in the tanks.

"After fueling the airplane, I met Mr. Downs driving the A.P.U. cart (Auxillary Power Unit) around to the plane.

"I came into the building and met [] and Mr. Downs in the Charter Office. We talked for some time. During this period, Mr. Downs questioned me regarding the charter arrangements and payments. I looked for payment receipts and found 2 receipts; one for a \$200.00 downpayment and one for a \$417.00 payment, which was marked paid in full. Both receipts were issued to George Giffe and both dated October 3, 1971; both received by [] indicating Giffe paid cash.

"Due to the fact that the receipts were for more than the cost of the charter. I attempted to call [] for an explanation, however, I could not reach him.

"We returned to the Charter Office and at 1:04 AM according to the clock I observed, I answered the telephone that had just rung. The caller identified himself as George Giffe and said he would be ten minutes late. The conversation ended. Mr. Downs, [] and myself walked out to the airplane and [] and another man, whom I did not know

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drove up in front of the building. [] works for American Airlines as a mechanic.

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"Between 1:20 AM and 1:25 AM the telephone rang again. I went in and answered the telephone and the caller, identifying himself as George Giffe, whose voice I recognized as the previous caller at 1:04 AM, said that he would again be ten minutes late.

"At exactly 1:30 AM, according to the clock I observed, I went behind the hangar and told my female acquaintance that the charter customer had not yet arrived. I requested she wait a few minutes longer. At this time I observed headlights from a vehicle, about a quarter of a mile away, approaching B.B.A. I returned to the front of the building to operate the A.P.U. cart.

"When I arrived at the front of the building [] and his friend had already left.

"As I began to approach Mr. Downs and [] I observed a late model, gold colored Cadillac, having a black vinyl top, cornered the north side of the building and braked to a stop at the corner of the building about 30 feet to the rear of the chartered airplane.

"At the moment I reached Mr. Downs and [] a white male got out of the drivers side, front seat of the Cadillac. When I reached the pilots, I heard the driver of the Cadillac ask who the pilots were and is this the plane. This man opened his wallet and told the pilots that he was a doctor. He said he had a girl in the car and that she was a mental patient or on drugs or something to this effect. This was approximately 1:45 AM on October 4, 1971. He also said that she had to be taken to a hospital in Atlanta and not to pay any attention to anything she says.

"The driver of the Cadillac was a white male, age late 30's or early 40's, about 6 feet tall, and weighing between 225 to 250 pounds, and had dark curly hair, dark complexion wearing a knit pullover sport shirt and dark trousers.

"This is the time I observed a woman in the front seat of the Cadillac, in the mid portion of the seat. She was screaming and struggling to get to the door, on the driver's side and I observed she was pounding her fists against the window of the driver's side door.

"I observed a white male, also, in the front seat of the Cadillac, struggling with the woman; attempting to restrain her.

"At this point, the man identifying himself as a doctor started back towards the car. He stopped after walking a few feet and displayed his credentials again. I never saw any credentials. After this, he walked back to the car. He opened the driver's side door and grabbed the woman who had managed to get partially out of the Cadillac.

"At the same time, the man on the passenger side of the Cadillac got out. I observed him to be a white male, about mid 30's in age, having curly dark hair and a mustache. He appeared to be about 6'0" to 6'3" tall, weighing between 150 to 200 pounds.

"Almost in the same instant, both of these men pulled guns and pointed the guns in the general direction of the chartered airplane.

"I continued to watch the man with the woman. He called her Susan and appeared to be making an effort to calm her. She continued to scream and struggle.

"I noticed something around her legs, between her ankles and knees, which I at first thought was a sanitary belt. She tripped and fell, as the man was leading her. He jerked her back to her feet and she reached down and removed the white belt from her legs.

"The woman was a white female, age about mid 20's with long light brown hair. When the man jerked her to her feet her dress had risen above her waist and she was clad in panty hose from the waist down.

"At this point the man was dragging the woman toward the airplane and she was screaming and struggling. I don't recall what she was screaming but I do recall her

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screaming that she was being kidnapped and, 'don't listen to them' and, 'help' while she was getting out of the car.

"As I was heading toward the APU cart near the rear of the plane I thought I heard the man, who claimed to be a doctor, say something to the effect that there were explosives on the airplane that would go off in 10 seconds or 10 minutes.

"At this point, I engaged the generator on the A.P.U. cart and picked up my head sets. I went to the front of the airplane to give the pilots the O.K. to start the engines. As I turned around, the last words I heard come from the woman were, 'Ah, go to hell,' apparently to the man who identified himself as a doctor. She was being pushed into the airplane at this time. I heard this statement just prior to putting on the head sets.

"In a few moments, the right engine started. I observed Mr. Downs and [] seated in the airplane and apparently talking to someone in the back of the airplane. I observed that the pilots were both pointing in the direction of the instrument panel indicating to me they might possibly be explaining something to the occupants in the rear of the plane.

"Moments later, the left engine was started. Mr. Downs then gave me the O.K. to disconnect the A.P.U. cart. I disconnected it and then drove to the south side of the hangar. I entered the canteen area through the hangar door and telephoned the airport security police at the Nashville Metropolitan Airport. At this time the airplane taxied out to the runway.

"I went out into the hangar and told [] of the situation and then I went to the office and telephoned [] the head charter pilot at his home.

"Later, I observed the item that was around the woman's legs, appeared to be a silk scarf, color white with pink polka dots.

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"I have read this page and eight other pages which incompass my statement and it is true and correct. I have initialed each page.

"Signed

[Redacted Signature]

"Witness

[Redacted Witness Name]

Special Agent FBI 10/6/71

"Witness

[Redacted Witness Name]

SA FBI"

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IV STATEMENT OF PILOT,
BIG BROTHERS AIRCRAFT, INC., REGARDING FULL
DETAILS OF HIJACKING

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FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 10/12/71

[redacted] home residence, [redacted] employed as a pilot for Big Brother Aircraft, Inc., Nashville Metropolitan Airport, Nashville, Tennessee, was interviewed and he expressed a desire to furnish a signed statement regarding a hijacking of a Big Brother aircraft from Nashville, Tennessee, to Jacksonville, Florida.

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[redacted] furnished the following statement:

"Place: Nashville, Tennessee

"Date: October 5, 6, 7, 1971

"My name is [redacted] and I reside at [redacted]

[redacted] have identified themselves to me as Special Agents of the Federal Bureau of Investigation. I would now like to furnish the following statement, which I understand is voluntary on my part.

"I am employed by Big Brother Aircraft, (B.B.A.) Inc., Nashville Metropolitan Airport, Nashville, Tennessee, as a pilot and salesman. On October 3, 1971 at approximately 4:00 to 5:00 PM my wife received a telephone call from B.B.A. advising BBA had a possible charter flight to Atlanta, Georgia, and about 5 or 10 minutes later I returned the call to B.B.A. I learned BBA had a charter to Atlanta, Georgia. Before I called BBA, I checked weather conditions which were forecast for low visibility. While talking to a lineman at B.B.A., whose name I do not recall, I told him, due to forecast weather conditions, it might be necessary to take a larger aircraft than the smaller craft that had been chartered. I told the man that this would amount to additional expense. The B.B.A. individual I was talking to said the man who chartered the flight was at B.B.A. that moment and let him talk to me. I then spoke to a man identifying himself as Mr. Giffe and explained the need for the larger plane resulting in more expense. Mr. Giffe told me it was no problem. Mr. Giffe said two individuals would be going to Atlanta and one would be coming back. Giffe told me he either left a deposit or was to leave a deposit. The conversation ended.

Interviewed on 10/5, 6, 7/71 at Nashville, Tennessee File # Memphis 164-76
Jacksonville 164-103

SA [redacted]
by SA [redacted]

Date dictated 10/8/71

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"I telephonically called B.B.A. shortly thereafter and advised the charter for Giffe would be in the Hawk Commander airplane and left instructions to get the plane out at midnight for the proposed 1:15 AM charter on October 4, 1971.

"I called Brent Downs, also a pilot with B.A.A. sometime during this time and advised him we had a charter at 1:15 AM to Atlanta, Georgia, probably in the Hawk Commander, and he said he would meet me at the airport at 12:00 midnight. The conversation ended at this point.

"I arrived at the airport in Nashville, Tennessee at approximately 12:00 midnight, at the facilities at B.B.A. Mr. Downs had previously arrived there. I telephonically contacted Nashville Flight Service for a weather check of the Nashville, Chattanooga and Atlanta area, and also the forecast for those areas. I then filed an instrument flight plan with the Nashville Flight Service. At this point the conversation ended. Mr. Downs and myself went into the hangar where the airplane was parked, which was about 12:15 AM on October 4, 1971.

"At this time we noticed the door was open on the Hawk Commander. I made an inspection, finding a suit bag with some items in it, was on the potty chair. The aircraft was then pulled out on the ramp and refueled. During this time, Mr. Downs made a pre-flight inspection of the aircraft, this being about 12:30 AM on October 4, 1971. I was in the process of putting the proper manuals on the aircraft, having number N9058N. While placing the manuals on the craft, I observed a small greyish color metal box located on the beverage bar in the front portion of the aircraft. The box had a three wheel combination device on the front portion of the box. I assumed these items belonged to the persons chartering the flight. Mr. Downs and I then waited for the chartering party to arrive. At approximately 1:05 AM on October 4, 1971, the telephone at B.B.A. rang and [redacted] a lineman at B.B.A. answered the phone. The call was from an individual who said the charter party would be about ten minutes late. I do not know who made the call. At about 1:25 AM, B.B.A. received a similar call from the chartering party, also received by [redacted] advising the party would be ten minutes late. At this time I was talking to [redacted] and his friend.

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"At about 1:45 AM on October 4, 1971, a vehicle, possibly a Cadillac, color gold with dark top, drove up to B.B.A. from the north side of the B.B.A. hangar and parked slightly to the left rear of the chartered aircraft, about fifty feet from the aircraft. The car was headed in a south, south westerly direction when it stopped, and parked at the north end of the B.B.A. facility in line with the end of the building, about fifteen feet from the building.

"At this time I was standing with Mr. Downs on the ramp between the aircraft and the hangar.

"An individual from the car, who I did not see get out of the car, approached Mr. Downs, and myself and asked where the aircraft and pilots were. I replied this is the airplane and we're the pilots. Momentarily thereafter, I heard a woman in the vehicle, possibly a Cadillac, screaming and hollering. I was approximately fifty feet from the gold colored car at this time. The woman was struggling in the car and there appeared to be someone else in the car with the woman. It also appeared to me as if the other person in the car was restraining the woman. The woman screamed very loudly. During this time the man who approached me either handed me or was showing me his credentials. I noticed a badge of some type, with his picture on it which resembled him. He showed me a black belt Karate card which had his picture on it and both pictures looked similar.

"Shortly thereafter, the woman who was in the car was then struggling with the man who previously showed me credentials and they were located about one-half of the way between where I was standing and the gold colored car.

"During this struggle between the woman and the man who displayed his credentials to me, the other occupant in the car, a large white male, wearing a mustache and bushy hair, about 35-40 years old was also with the girl. I at this time observed what appeared to be something white around the woman's legs between her knees and ankle. The woman either fell or tripped on this white object which I first thought was a sanitary belt.

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"From the time the gold colored Cadillac arrived and the time that I got on the airplane, I am not exactly certain as to the sequence of events as it all happened so very rapidly.

"I recall telling the man who displayed his credentials to me that I would not take the woman on the aircraft in her condition. Either prior to or after I made this statement, this man told me he was a Doctor and the woman was a mental patient and that either he or they had to get her to Atlanta to a mental institution. This man stated he would give her a sedative once aboard the aircraft.

"I then suggested to Mr. Downs that we get the police to check this out before the flight was made.

"At this time the man who displayed his credentials produced a pistol and ordered us aboard the aircraft. I never noticed the other man, who wore a mustache and bushy hair to have a weapon outside the aircraft but did notice he had a weapon inside the aircraft.

"After we were ordered on the airplane, I walked to the nose of the airplane and said I was checking to see if the wooden chocks or wooden blocks were removed from behind the wheels. I believe the man who displayed credentials said the aircraft has been checked or it's already been checked and to get on the airplane. I believe that Mr. Downs was already aboard the aircraft, but I am not certain, and I boarded the aircraft. I am fairly certain Mr. Downs and myself were the first two persons to board the aircraft.

"The next thing I recall is turning around after I had been seated in the co-pilot's seat and seeing the woman on the floor between the two aft facing seats. The woman's feet were positioned toward the front of the aircraft with her head to the rear. I recall that the short dress the woman was wearing was up exposing her buttocks indicating to me she was either dragged on the airplane or thrown to that position as I heard scuffling or commotion.

"I do not remember who entered the airplane last but from all indications it may have been the man with the mustache because he pulled the door closed and latched it.

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"Mr. Downs told me to check and make sure the door was closed and I did this as the man with the mustache was closing the door.

"At this time I noticed the man with the mustache had a pistol or gun in his hand. This individual was either sitting on the potty chair or in a crouched position in front of the potty chair, facing Mr. Downs and myself. He had exposed in the palm of his hand a gun very similar to the gun produced by the man who ordered us aboard the aircraft.

"After the door was closed, I observed the man who ordered us aboard the airplane continually alternated between the seats located in the right rear of the airplane. The woman at this time was seated in the left, most rear seat facing forward. Mr. Downs was seated in the pilot's seat.

"At this time the engines of the airplane were started with the assistance of [redacted] a lineman for B.B.A. who was located outside the aircraft. After the engines were started, Mr. Downs gave [redacted] the signal to disconnect the Auxillary Power Unit from the aircraft, ***** which he did. I then turned the master radios on and called Nashville Ground Control and advised them that 9058-N was on the B.B.A. ramp, standing by for I.F.R. (instrument flight rules) clearance to Atlanta, Georgia.

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"Nashville Ground Control gave me the necessary information and our clearance to Atlanta, Georgia. We were cleared to taxi to one of two runways and I chose runway #31.

"I can recall that while taxiing to runway 31, Mr. Downs and myself looked to the rear of the airplane because of a commotion or struggle or a conversation between the men. At this time Mr. Downs almost ran off the taxi-way. We then proceeded to runway 31 where Mr. Downs braked the aircraft to a stop, to await take-off instructions. At this time a car with a blue flashing beacon on light appeared on the right side of the airplane.

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"Soon after we were airborne I noticed that the man with the mustache had placed the gun opposite the small of his back between the skin of his back and his trouser band. The gun stayed in this position until we were close to Jacksonville, Florida, or on the ground at Jacksonville, Florida.

"About 15 to 30 minutes after we were airborne, the man with the mustache opened a can of Hamm's Beer and drank it. I also observed the man who ordered them aboard the aircraft, kept moving back and forth between his seat and where the woman was seated. I observed this man on one occasion take a drink from a bottle but I do not know the contents of the bottle. The lighting was very dim in the rear portion of the aircraft.

"During this time, Mr. Downs and I continually asked the man with the mustache if they were really going to Atlanta. On each and every occasion, this man replied with a shrug, and gave the appearance of being very calm and confident. Finally, the man with the mustache turned around in the potty chair and talked to the man who ordered us aboard the airplane.

"After a short time the man with the mustache turned back around and quizzed Mr. Downs and myself concerning the amount of fuel aboard and the distance the airplane could fly on that amount of fuel.

"I told the man with the mustache we had enough fuel on board to go to Atlanta and return to Nashville. This man then asked me if we could go to Jacksonville, Florida. I told him to wait a few minutes while I checked the mileage. I checked the mileage and told this man we had enough fuel to go to Jacksonville, Florida and that we would only have thirty minutes reserve fuel left. Mr. Downs and myself knew that we would have more than thirty minutes of fuel reserve left. I estimated to have about one and one-half hour of fuel reserve left after reaching Jacksonville, Florida.

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"The man with the mustache turned around, and talked again with his partner, the man who ordered us aboard the plane. The man with the mustache then turned around and said 'Let's go toward Jacksonville.' I told him it was necessary for us to check weather through our route of flight and also get a change of clearance. This man said, 'This is o.k.'

"I asked Center, either Memphis or Atlanta, for weather information to Jacksonville, Florida, and a change of clearance for Jacksonville, Florida, bypassing Atlanta, our intended destination. This was done while we were in the Chattanooga area. We received a weather briefing from Center and also our clearance to Jacksonville. At this time we requested a higher enroute altitude which was granted. This altitude was 17,000 feet, mean sea level.

"We continued to fly towards Jacksonville but we had no indication from the other men we would land there. During this period of time we were approaching the Atlanta area, which was about 45 minutes to one hour after departing Nashville. Up to this time, the men gave no indication that they knew that Control Centers were aware of the skyjack situation.

"After passing the Atlanta area, the man with the mustache apparently became suspicious and asked Mr. Downs and myself if they, the people with whom we were talking on the radio, knew what was going on, or words to that effect. Mr. Downs replied they were aware of the situation ever since we left Nashville.

"At that time, the man with the mustache again turned around and talked with his partner. After this conversation, Mr. Downs told them that someone would be waiting for us at Jacksonville or wherever we went.

"The man with the mustache had another conversation with his partner at this time. After he had turned around one of us told the man with the mustache that the captain of the aircraft could make requests for additional fuel and necessary equipment for a longer flight. This, I think, was in reply to an alternative destination requested by the man with the mustache, to go to Jamaica.

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"Mr. Downs told the man with the mustache we needed to know where we going after reaching Jacksonville because we had no charts, necessary fuel, floatation gear and there was no way this aircraft could reach Jamaica.

"At this point, Mr. Downs suggested the alternative destination might be Freeport, Bahamas, as the airplane could reach Freeport after a refueling at Jacksonville. During this period of time I requested and received a weather briefing for the Freeport, Bahama area.

"Without indicating to the two men, Mr. Downs and myself felt that we may have reached Freeport but with little or no fuel remaining. We did not want to suggest this to them for fear that they would risk the flight without refueling.

"We continued our flight towards Jacksonville although we were never instructed by either of the two men to actually land there.

"Prior to this on three or four occasions the man with the mustache and his partner each told us that we would receive \$25,000.00 apiece when this was all over. We were told, all we had to do was, 'take care of the stick,' which meant fly the airplane.

"Through Center, with the permission of the two men, Mr. Downs advised Center 'this is an unusual flight' or 'this is an unusual situation.' Mr. Downs requested through Center that the Jacksonville International Airport make available; jet fuel, floatation gear, charts, and an A.P.U. starter.

"A few minutes later, the man who ordered us on the airplane requested Jacksonville have available two bottles of scotch, and named a brand I do not recall, 'even if they have to steal it.'

"We honored their request and Center acknowledged they had received all our requests.

"The two men had also requested 200 to 300 yards clearance from around the airplane once it arrived on the ground.

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Either Mr. Downs or myself put this request through Center, which was acknowledged. This request possibly was made at the time of the other requests.

"Prior to landing, both men made requests that we make inquiries to determine if their demands were going to be honored. I believe I made this inquiry through either Center or Jacksonville approach and I was told the requests had been forwarded to Jacksonville International Airport.

"Soon after we made preparations for landing at Jacksonville International Airport we received approach instructions. Without further objections from the two men, we landed at Jacksonville International Airport, as instructed, and followed taxi instructions.

"We taxied to a remote area, made a 180 degree turn and braked to a stop. While taxiing to this area, the man who ordered us on the airplane, pulled all the curtains inside the airplane, in the rear of the aircraft. He also pulled the curtain separating the front of the airplane, which Mr. Downs, myself and the man with the mustache were sitting, sometime later, prior to my leaving the airplane.

"After braking the aircraft to a stop we were advised by one of the two men, which one I don't know, to leave the engines running. Mr. Downs or myself called Control asking the whereabouts of the fuel truck. To the best of my knowledge I do not think we received a response to this inquiry.

"At this time, a car pulled up beside the hangar to the right of the airplane, about 100 yards from the aircraft. This car pulled up with lights on and stopped. This car was noticed by both men and both pilots. The two men wanted to know who was in the car. Mr. Downs or myself radioed Control and asked who was in the car that pulled up beside the hangar.

"I believe at this time, a voice on the radio said, 'this is the F.B.I.', and words to the effect there will be no fuel for the airplane. Upon hearing this, the man who ordered us on the airplane said words to the effect, let's get out of here or let's take off.

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"Either Mr. Downs or myself told the two men that we could not take off from this position and also that we only had 30 minutes of fuel left and couldn't go anywhere, anyhow.

"I recall that sometime soon after we landed at Jacksonville, the man with the mustache had the gun back in his hand again. I also observed that the mustached man appeared for the first time to be extremely nervous and also perspiring profusely on his forehead. Up to this point, this man seemed calm and confident and tried to calm me on several occasions since the beginning of the flight. Mr. Downs appeared very calm and unafraid during the duration of the flight.

"I got the impression the man with the mustache did not want the airplane to leave Jacksonville with low fuel, even though his partner wanted us to leave.

"We received an order over the radio, I believe, to depart from the airplane. I believe we once again made a plea for fuel. I believe at this time we were instructed over the radio to leave the engines running until the fuel was used because the airplane was not leaving the airport.

"At this time, I asked the two men if I could leave the airplane in order to persuade the F.B.I. to give us fuel. The man who ordered us on the airplane agreed to this.

"I started to get up out of my seat, after his decision, and Mr. Downs said he would go talk to the F.B.I. The man who ordered us on the airplane, said, 'No, the pilot will stay on the airplane.' The man with the mustache, tapped either his finger or his gun on Mr. Downs' right shoulder and told him he would remain on the airplane.

"At this time either Mr. Downs or myself told the two men we would have to stop the left engine in order to get out of the aircraft. Mr. Downs proceeded to stop the left engine, without objections from the two men. After the left engine stopped, Mr. Downs used the over-ride switch in order for me to unlock the door.

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"As I was standing in the doorway, still inside the airplane, not sure whether or not the door was open, I turned to the left, which would be the rear of the plane and observed that the man who ordered us on the airplane was holding what appeared to be the metal box in his lap. The box appeared to be open and the man had raised his left hand above the box with his left index finger pointed down toward the box. The same man said something to the effect that he would blow up the airplane. During the approximate 5 minute period prior to my departing the airplane, this man appeared to me to have become more quiet. I also observed what appeared to be a gun in his right hand pointed right at me.

"My last words before leaving the aircraft were 'please don't do anything until I've talked with the F.B.I.' I felt as I left the aircraft that he would shoot me in the back. I was very nervous and frightened during this time. As I left the airplane, I do not recall closing the aircraft door or I do not recall leaving it open.

"The next thing I recall, I was in the vicinity of the tail of the airplane. There I observed two men rushing towards me, one with a gun and one carrying a rifle. I continued walking towards them raising my hands over my head to indicate I was not carrying any weapon. I believe I told them two or three times I was one of the pilots and by this time they had their guns near my face. I became more frightened at this point and was taken to an automobile by these two men and told to get inside. I don't recall if I told these men anything about any guns or any explosives although they said to me this is a bunch of malarkey and there are no explosives aboard the airplane.

"I do not recall the sequence in which the following events occurred but I do recall hearing gunshots as a man was apparently shooting the two main tires on the airplane. Shortly thereafter a third man appeared on the right side of the airplane and, using a rifle, shot in the direction of the side of the airplane. About this time an automobile pulled up in front of the airplane, about 100 feet away, with its headlights on. Then I observed an excessive amount of jet fuel or oil spewing from underneath the right engine, indicating to me that the man with the rifle fired into the right engine.

ME 164-76

JK 164-103

13

"The engine quit running very shortly after this and the propellor went to a feather position. I observed some man go around to the front of the airplane. These are the only gunshots that I recall hearing.

"Either before the gunshots or after the gunshots, I recall seeing the man with the mustache come from behind the airplane. He was immediately taken into custody by two men, who either placed or threw him on the concrete ramp.

"Shortly after these events occurred I was told that the persons in the aircraft were dead.

"I recall now that during the flight before the woman became dazed, she and the man who ordered us aboard the plane argued. I heard her say something about loving another woman. During the flight, sometime after I observed the woman to be dazed, I saw the man who ordered us aboard the airplane lean over her as if he were kissing her.

"I have read this statement, consisting of this page and twenty-two other pages, a total of twenty-three pages, and it is true and correct to the best of my knowledge. I have initialed this page and each and every other page of this statement.

b6
b7C

"(Signed)/s [redacted]

10/7/71

"Witness:/s [redacted]

SA, FBI, Nashville, Tenn.. 10/7/71

"Witness:/s [redacted]

Special Agent, F.B.I., Nashville, Tenn.

10/7/71"

ME 164-76

V COMMUNICATIONS FROM HIJACKED AIRPLANE TO
FAA FACILITIES AT NASHVILLE, TENNESSEE, AND
MEMPHIS, TENNESSEE

FEDERAL BUREAU OF INVESTIGATION

1

Date 10/12/71

[redacted] Chief, Nashville Tower, Federal Aviation Administration, Department of Transportation, Nashville, Tennessee, made available a copy of a tape recording which was made automatically at their tower on October 4, 1971, which contained transmissions between the Nashville Tower and Nashville Area Commander 9058 November, said airplane being owned by Big Brothers, and conversation taking place during hijacking take-off. The following conversation between the hijacked aircraft and Nashville Tower started at Greenwich Mean time 6 hours, 53 minutes, 10 seconds:

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Area: Nashville Area Commander 9058 November. We are at Big Brothers. We are instrument stand to Atlanta. We are ready to taxi.

Tower: Commander 9058 November-Nashville ground control. Taxi runway 31 or 20 left your choice. Wind calm. Altimeter 3,000.

Area: Okay. 30 ought and will take 31.

Tower: Alright, ready to transmit, you copy.

Area: Clear, ready to copy.

Tower: Commander 9058 November. Clear Atlanta Airport as filed. Maintain 11,000 expect further clearance at 13,000 within 10 minutes after departure and squawk 1,000 just before departure. Over.

Area: Clear to Atlanta as filed, 11,000 expect 13,000 in 10 minutes squawk 1,000.

Tower: 9058 November that's correct.

Ground Unit 52: 52 to ground.

Tower: 52 ground go ahead.

On 10/7/71 at Nashville, Tennessee File # Memphis 164-76
Jacksonville 164-103

by SA [redacted] Date dictated 10/12/71

ME 164-76

2

52: (Transmission not discernible)

Tower: Say that again 52.

52: We're out here at this aircraft.

Areo: 58 November is rolling. 58 November we're rolling 31.

52: 52 to ground. We're going down runway.

52: Doesn't look like he's going to stop.

?: You're right there.

?: Clear to cross 10 left 20 right.

?: Guess you'd better call the FBI.

Areo: Okay 58 November for runway.

Tower: 58 November make left to right turn proceed on course.

Areo: Okay. 58 November.

Tower: Left turn on course.

Tower: Tower to Command of November Squawk 3100.

Areo: Okay squawk 3100.

Tower: 58 November for radar contact.

Areo: Command 9058 this is (?).

Tower: Maintain 13,000 contact Memphis Center 125.4.

ME 164-76

3

Areo: 125.4 up to 13,000.

[] advised that in the background of this tape there is a recorded voice counting off the time in five seconds sequences. He stated the first transmission started at Greenwich time 6 hours, 53 minutes, 10 seconds and concluded at approximately 7 hours, 2 minutes.

b6
b7C

FEDERAL BUREAU OF INVESTIGATION

1

Date 10/13/71

Federal Aviation Administration, Department of Transportation, Democrat Road, Memphis, Tennessee, made available a copy of a tape recording which was made automatically at the Federal Aviation Administration control center, Memphis, on October 4, 1971, which contains transmissions of conversation involving the hijacked airplane owned by Big Brothers, Nashville, Tennessee, and piloted by BRYANT DOWNS.

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The recording commenced at 0644.15 (6' 44" 15 sec.) Greenwich Mean time, and ended at 0722 (7' 22") Greenwich Mean time.

"This is Memphis Air Route Control Center. My name is The date is 7 Oct. 1971. The time is 18.48 Greenwich Mean Time. This rerecording pertains to the hijacking of 9058 Nan on 4 Oct. 71 & covers the time period on 4 Oct. 71 from 0644 Greenwich Mean Time to 0722 Greenwich Mean Time. Thereby certify that the following is a true rerecording of the conversations pertaining to the incident.

(6' 44" 15 sec)

9058 November going to go to Atlanta

Take off clearance ...

No I haven't heard from him.

... 6:15 going to Atlanta

No one told yet (phonetic)

(Illegible talk)

Commander 9058 November

Commander 6T

On 10/8/71 at Memphis, Tennessee File # Memphis 164-76
Jacksonville 164-103

by SA BDH/bb Date dictated 10/13/71

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ME 164-76

2

File for air file to Atlanta

Maintain one 3,000 on course 65

(6' 58" 40 sec)

009 (phonetic)

Yes

This is 58 November's Office 59 Safety and Security here informed us this aircraft is being hijacked.

Say again.

Safety and Security advised us here that this aircraft is being hijacked.

58 November.

Affirmative.

You're not joking?

Negative.

All right.

They chased him down the runway but they're not going to get him.

O.K. I'll check with you. You going to go IFR?

Affirmative. He's got his clearance. I didn't know it till I done gave him his clearance... and they called me and said they... advised them.

All right, let me get the supervisor on the line...

All right, have him squawk... Just have him squawk the code.

ME 164-76

3

77?

No.

31.

Yea, but just tell him to squawk the code.

O.K.

Approach to 49.

Yea.

All right, did he say where he was going?

No, I give him his clearance to Atlanta and he copied it like that. That's the only thing he said. He didn't say anything else. He just said he was going.

All right, Doug (phonetic) is that him... south south southwest to Omney (phonetic)

3 South Southwest

All right 500 Station to 13 (phonetic)

All right...

Anything with radar contact...

(7'1" 25 sec.)

All right Now lets...

Go ahead switchboard.

(7'2" 5 sec.)

Memphis Center 58 November We're at a floor for one 3,000.

ME 164-76

4

... 58 November.

9058 November, Memphis, if possible say destination.

We're going to Atlanta.

9058 November departed Nashville 0659, we hope climbing to 13, and got remarks.

1

Go ahead.

It's a hijacked aircraft,... going to Atlanta if possible on appropriate code 31 ... get in touch with my supervisor... have your supervisor call mine.

BTVO

Is he talking to anybody?

Yea, he's talking to me.

(7'6" 10 sec)

All right.

Approach to 49.

Yea.

What did they tell you exactly?

Well he had already taxied out and I had done given him his clearance and security called me and said that the fixed base operator had called me.

Who called you?

Safety and security.

Safety and security?

Yeah.

All right.

ME 164-76

5

...called me and said that the operator, the fixed based, or somebody at the fixed base operator where he departed from called them and said that a man had a gun at a woman's head and forced her on the airplane.

All right.

Now I don't know if they were going on...

This is the regular pilot that flies this airplane, isn't it?

It's a Nashville airplane?

Yes... said he forced the woman on the plane with them and he wanted me to try to hold him... I had already given him clearance & I didn't have no excuse to delay him. but I didn't clear him to take off-he just said he was rolling-they sent 2 cars out-he took off on his own actually.

O.K. Are they notifying Atlanta?

Yes we're calling Atlanta and Washington.

O.K.

... and the FBI has been notified. I think they're surely going to notify them.

O.K... who does the airplane belong to?

I'm not sure. I don't know who the plane...

How much fuel was on board?

I can probably get that if you need it.

I don't want to ask him...

O.K., let me call the fixed base operator, see if they can tell me. They can probably show... I'll call you back.

O.K.

ME 164-76

G

(7'8" 30 sec)

I'm going to tell Atlanta what the situation is.

... to 63.

Go ahead.

Listen, on this 58 November, the people on board as far as who is doing the hijacking may not know that anybody is aware of it... the problem is before they left Nashville the airport security and the fixed base operator said a man forced his way onto the airplane with a gun at a woman's head. I don't know how much fuel he's got and I'm trying to determine that and I'll give that to you. I don't want to ask him because I don't want to alert anybody on the airplane, so as soon as I can find out how much fuel is on the airplane I'll give that to you... if he doesn't stop in Atlanta. He took off without a takeoff clearance... but he just departed you know, said he was rolling.

Some of those boys use headsets - you might in talking to him ask him if he's using a headset.

Well I don't know what we could say to him. Do you?

Well, if he knows where he's going.

He said Atlanta if possible.

All right, let me know if you hear anything more..

O.K. I'll get you the fuel on it as soon as I can.

(7' 10" 40sec)

We're on a 12 for one 3,000 (phonetic)

9058 November, belongs to Big Brothers Aircraft and he had maximum fuel on board. I don't know for sure what this is right now. I'll find out in a few minutes if you need to know.

ME 164-76

7

Well we'd like a range if you know... the maximum fuel... we'd like to know what would ...

I should be 1400 miles at 55% power but I don't know what the altitude would have to be acquire this ...

O.K. If he wants to talk to use he can...

What's the pilot's name?

I don't know. I'll get that to you if you need it.

I'm sure somebody will need it.

O.K. As soon as he calls back I'll get... you know anything else we'll need, do you think?

I don't know what else you can do. I'm just trying to... the speaker.

Well, I don't know either.

All right.

(7'16" 10sec)

58 November can fly 5½ hours at average speed 230 knots.

Five and a half hours fuel at 230 knots.

Yea - now do you need the pilot's name?

Yea, what is it?

O.K. it's Brant, B-R-A-N-T...

Q.

What?

Q - Quebec.

ME 164-76

8

O.K.

Downs.

D-O-W-N-S. That's Brant Q. Downs?

Yea, and the co-pilot, the co-pilot on board - [REDACTED]

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[REDACTED]

Right.

Do you have a description of the man with the gun?

No, I didn't get it. They probably have one. I don't know.

I'm sure the FBI is getting on it.

They were notifying the FBI. I'm sure they told them everything.

Co-pilot [REDACTED] ...

Downs is the pilot.

Fi

Right.

(7' 18" 15 sec)

Approach to 49.

49.

On this 58 November, they intended to go to Atlanta and these people just showed up. Is that right?

That I don't know. See he filed his flight plan quite a while in advance ...

That's right, that's the reason we're curious about it now.

ME 164-76

9

No they didn't say anything about where...

I know he filed his flight plan in advance to Atlanta.
I just wondered if these people just happened to show up
out there...

That's what I understand. They just happened to show up.
I can probably find out...

If you can.

... if the plane was scheduled to go to Atlanta anyway.
We need that information. O.K., we'll do regardless of what...
at this time with the flight plan...

(72" 20 sec)

Memphis... November 9058 November crossed the level one
3,000 code 3100... 5½ hours fuel at 230 knots, and let us
know what happens...

O.K.

November 9058 November

... this is Memphis Center contact Atlanta 13255.

3255 so long(phonetic).

ME 164-76

VI DETAILS OF BACKGROUND INVESTIGATION
ON SUBJECT GIFFE

FEDERAL BUREAU OF INVESTIGATION

1.

Date October 8, 1971

GEORGE M. GIFFE, SR., 324 Gaywood Drive, Nashville, Tennessee, a retired employee of the Veterans Administration at Nashville, Tennessee, advised as follows:

He is the father of GEORGE M. GIFFE, JR., who recently resided in Apartment J-11, Bavarian Apartments, Nashville, Tennessee, and who was the owner of a 1970 Cadillac automobile which was recently purchased in Chattanooga, Tennessee, from Ayres Motor Company of Chattanooga.

He had no objections to the search of his son's apartment or the Cadillac automobile and he executed a consent to search of both the apartment and the automobile at Nashville, Tennessee.

His son was born July 11, 1936, at Chattanooga, Tennessee, and he attended school in Nashville, Tennessee. In approximately 1954 he married [redacted] in Nashville while both his son and [redacted] were attending high school. Three children were born from this union and in approximately 1968 his son divorced [redacted] who has now remarried and is [redacted] residing at [redacted] in [redacted].

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b7C

In the same year of his son's divorce from [redacted] his son married SUSAN LAKICH in Nashville and one child was born of this union.

In approximately 1962 his son joined the Tennessee Air National Guard at Nashville, Tennessee, but was given a discharge from this organization due to a slight mental problem. His son was under the care of [redacted] Psychiatrist, for approximately 6 months during the time he was a member of the Tennessee Air National Guard. He understood that his son was disturbed over his marriage and as a result, his mental condition was such that it was deemed advisable to have him placed under the care of [redacted].

On 10/4, 5/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] Date dictated 10/7/71

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His son later attended Peabody College in Nashville, from which college he graduated and later taught at Peabody College prior to resigning his position to enter the real estate business. He was engaged in the firm of the Golden B Real Estate Company, Nashville, for some time, but to his knowledge his son has had no gainful employment during the past year.

He is not familiar with his son's business activities, nor is he acquainted with any of his son's associates other than the Negro coach at Tennessee State University in Nashville.

His son has had considerable financial difficulty as a result of some of his business transactions and he, GIFFE, SR., has loaned his son approximately \$6,000.00 over the past 3 or 4 years.

His son has been residing in the Bavarian Apartments for quite some time and only occasionally visited his parents' home in Nashville. On about September 23, 1971, his son appeared at his residence on Gaywood, at which time he brought with him three guns and a small metal lockbox which contained three separate dials operating the locking mechanism. He has no information as to the contents of this box, but it was later removed from his home and its present whereabouts are unknown.

On October 5, 1971, Mr. GIFFE exhibited the three weapons which his son had brought to the home previously and they are described as follows:

.22 caliber Luger revolver,
Serial No. 563250;

.30 caliber Carbine rifle,
Universal, Hialeah, Florida,
Serial No. 112415;

.22 caliber BRMA-LA22 Automatic,
Serial No. 37698.

ME 164-76

3

Several months ago his son gave him an automatic pistol for protection at the home and he exhibited this weapon which is a Fabrique Nationale D'Armes De Guerre Herstal Belgique automatic 9 millimeter, Serial No. 46653.

He questioned his son concerning the guns which were brought to his home on about September 23, 1971, to determine if they were properly registered and his son assured him that they were. He had also questioned his son concerning the registration of the automatic weapon which had been given to GIFFE, SR. and his son stated that this gun was properly registered. His last contact with his son was on or about September 23, 1971, and he has had no contact with him since that time. He has not been particularly close to his son, has never interfered with his affairs or questioned his activities in any way and only conversed with his son when his son sought advice from him with reference to a particular matter.

According to Mr. GIFFE, his wife is presently confined to the Baptist Hospital due to [REDACTED]

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/7/71

A search was conducted of the residence of GEORGE M. GIFFE, JR., Apartment J-11, Bavaria Apartments, 4501 Packard Drive, Nashville, Tennessee. The following observations were made: Upon entering the apartment music was heard, and it was determined that the radio, located in the living room, was playing and that the television set, located in the upstairs master bedroom, was also turned on. The bedroom was in an untidy and disorderly condition with articles of clothing and towels strung throughout. Lights were turned on in the bedrooms and the downstairs portion of the apartment. The overall appearance of the apartment indicated that someone had departed the apartment in haste.

The apartment contained numerous personal and business papers of GEORGE M. GIFFE, JR., some of which bore the names of the Al Hirt International Corporation, the Global-V Real Estate Corporation, the Verstand Corporation, and the Atlantic Development Corporation. Papers indicated that GIFFE was an officer of each of these companies.

A carton and instruction manual for a Walther Model "PPK" 7.65 millimeter automatic pistol was located in the lower right-hand desk drawer in the living room of the apartment. A similar carton was located in the upstairs master bedroom. The latter carton indicated that the serial number of the weapon which had been contained therein was number 220487.

Also located in the lower right-hand desk drawer in the living room was a full box of 9 millimeter "short" Super-Vel ammunition. Several rounds of .30 caliber ammunition were also located in the desk drawers. This receipt was also located by SA HARRIGAN and is being retained. The desk also contained numerous miscellaneous business papers pertaining to various business activities of GIFFE. Among the papers was a notification form from the Internal Revenue Service indicating that an audit of GIFFE's tax returns for the years 1968, 1969, and 1970 had commenced during May, 1971.

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76
by SA [redacted] SA [redacted] and SA [redacted]
Date dictated 10/6/71

ME 164-76

3

Located throughout both the downstairs and upstairs rooms of the apartment were numerous books and magazines on the subjects of witchcraft, sorcery, and astrology.

Also located in the downstairs closet and in the upstairs closets were several belts and holsters. The only weapon located in the apartment was a "B-B" gun, which was found in the downstairs living room closet.

FEDERAL BUREAU OF INVESTIGATION

Date 10/8/71

[redacted] Manager, Bavaria Apartments, 4501 Packard Drive, Nashville, advised that GEORGE M. GIFFE, JR., Apartment J-11, Bavaria Apartments, filled out a lease application at the Bavaria Apartments on October 23, 1970. She furnished the following information from this lease application:

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Name	GEORGE M. GIFFE, JR.
Former residence	Apartment 9-C The Georgetown Apartments Nashville, Tennessee
Wife	SUSAN GIFFE
Children	[redacted]
Credit reference	Church Street Office The Capitol City Bank (checking)
Character references	[redacted] Valley Brook Telephone [redacted] [redacted] Telephone [redacted]

[redacted] advised that GIFFE once told her about two or three months ago that he was connected with the "Mafia" and that he could get anyone "eliminated" that he wanted. He also said that he was looking for a bullet-proof Cadillac on this occasion. She stated she has no idea to whether or not GIFFE was joking about this matter but stated it was quite possible that he was joking. She advised that GIFFE formerly worked with the Al Hirt Restaurant Enterprise in Nashville. She stated that when GIFFE paid his rent, his checks would bear the name Continental Enterprises, but she stated she did not know what this outfit actually was.

On 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76

by SA [redacted] Date dictated 10/7/71

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FEDERAL BUREAU OF INVESTIGATION

Date 10/8/711

[redacted] Bavaria Apartments, 4501 Packard Drive, Nashville, Tennessee, furnished the following information:

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She advised that, although she was not personally acquainted, she did recognize GEORGE M. GIFFE, JR., and SUSAN GIFFE, his wife, when she observed them. She pointed out that her apartment is located across a parking area from the apartment occupied by the GIFFES.

On Sunday, October 3, 1971, she observed GEORGE M. GIFFE, JR., arrive in the parking area outside of his apartment building between 3:00 and 3:30 P.M. He was driving a gold colored Cadillac automobile. GIFFE went into his apartment, stayed only a few minutes, and returned to his automobile. At that time he was carrying a blue metal box of some type. He got into the automobile and departed. He was alone at the time.

On 10/4/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] Date dictated 10/6/71

FEDERAL BUREAU OF INVESTIGATION

Date 10/8/71

[redacted] Bavaria Apartments,
4501 Packard Drive, Nashville, Tennessee, advised as follows: b6 b7C

He was acquainted with GEORGE GIFFE and his wife SUSAN, who also lived in the Bavaria Apartments. He has not seen SUSAN GIFFE in about the last month. The last time he saw GEORGE GIFFE was about 4:00 P.M. on Sunday, October 3, 1971, when GIFFE drove by his, [redacted] apartment driving a solid gold Cadillac. GIFFE was alone and he had never seen GIFFE in this Cadillac before.

On 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76

by SA [redacted] Date dictated 10/7/71

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FEDERAL BUREAU OF INVESTIGATION

Date 10/8/71

[redacted] Bavaria Apartments,
4501 Packard Drive, Nashville, advised as follows:

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b7c

He was acquainted with GEORGE and SUSAN GIFFE who also resided at the Bavaria Apartments. He last saw GEORGE GIFFE at about 4:00 P.M. to 5:00 P.M. on Sunday, October 3, 1971, at which time GIFFE drove by the [redacted] apartment in a gold Cadillac or Buick automobile, approximately 1964 to 1965 model. This is the first time he had seen GIFFE in this particular automobile inasmuch as GIFFE formerly drove a Cougar. On this occasion GIFFE was alone.

[redacted] advised that on that day, October 4, 1971, he and his wife were moving to Newark, Ohio.

On 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76

by SA [redacted] Date dictated 10/7/71

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FEDERAL BUREAU OF INVESTIGATION

Date 10/8/71

[redacted] Bavaria
Apartments, 4501 Packard Drive, Nashville, advised as follows:

b6
b7c

She was acquainted with GEORGE and SUSAN GIFFE who also resided at the Bavaria Apartments. The last time she saw GEORGE GIFFE was at approximately 4:00 P.M. to 5:00 P.M. on Sunday, October 3, 1971, at which time GIFFE drove by the [redacted] apartment in a gold Cadillac, on which occasion GIFFE was alone. During the summer of 1971 she would frequently see SUSAN GIFFE at the apartment swimming pool, at which time SUSAN would be with their young child.

[redacted] advised that on that particular day, October 4, 1971, she and her husband were moving to Newark, Ohio.

On 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76

by SA [redacted] Date dictated 10/7/71

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/8/71

1

[redacted] 4501 Packard Drive, Apartment [redacted] Bavaria Apartments, Nashville, Tennessee, was interviewed at his apartment where he provided the following information:

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[redacted] stated he has been acquainted with GEORGE M. GIFFE, JR., since the two men had attended grade school together in Nashville, Tennessee, approximately 25 years ago; however, he stated he had not seen GIFFE since that time until approximately three years ago when they happened to see one another on a chance meeting.

[redacted] stated they had renewed their friendship when the GIFFES moved into the apartment directly across the hallway approximately seven months ago.

[redacted] stated they had attended several parties at the GIFFES' apartment. [redacted] stated they had moved out of the apartment and were living with [redacted].

[redacted] noted that GIFFE always carried some kind of hand gun on his person. He described the weapon as an automatic, black in color, which was approximately six inches in length. [redacted] stated GIFFE was always showing his gun to people who came over to his apartment plus he would display other weapons that GIFFE had in the apartment. [redacted] noted he had seen at least two other rifles in the apartment at different times.

[redacted] stated GIFFE was always bragging about being a member of the Mafia or if not being a member of the Mafia at least knew someone in the Mafia who could have someone killed. GIFFE also claimed to have been a mercenary in South America. He also claimed to be a male witch. GIFFE also stated that he was ordering a bullet-proof Cadillac. [redacted] stated that he just thought GIFFE was talking too much to impress people and therefore did not pay any attention to what he was saying.

[redacted] noted that he owns and drives two gravel trucks and that GIFFE had attempted to get him interested in a sand and gravel business near Atlanta, Georgia. He stated that he had made a couple of trips

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76

SA [redacted]
by SA [redacted] Date dictated 10/6/71

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/8/711

[redacted] 4501 Packard Drive, Apartment [redacted] Bavaria Apartments, Nashville, Tennessee, was interviewed at her apartment where she provided the following information:

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b7C

She has become acquainted with Mr. and Mrs. GEORGE M. GIFFE who live directly across the hallway from her and her husband since the GIFFES moved into the apartment complex approximately seven months ago.

She noted, however, that Mrs. GIFFE had moved out of the apartment approximately two weeks ago. It was her understanding that SUSAN GIFFE is now living with her parents so that they could take care of the GIFFES' small child.

[redacted] noted that on Sunday evening, October 3, 1971, she and [redacted] who also lives at the Bavaria Apartments, had noticed Mr. GIFFE out in the hallway at approximately 9:00 P.M. He was carrying two garment bags and seemed to be walking back and forth from his apartment to his automobile several times during that evening.

[redacted] asked GIFFE where he was going, and he stated that he and [redacted] were going to Atlanta. GIFFE told her that he had gotten his business financed and was going to Atlanta to get the money. She asked GIFFE where SUSAN, his wife was, and he told her she was over with her mother.

[redacted] stated she did not notice anything peculiar about GIFFE other than he appeared perhaps a little bit more nervous than usual.

[redacted] stated that she had been over to the GIFFES' apartment on several occasions to attend parties with her husband. She described GIFFE as a very peculiar person who she thought was "crazy." She stated she was afraid of GIFFE and of recent had refused to go to their apartment.

[redacted] lastly stated the name [redacted] is not familiar to her.

Interviewed on 10/4/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] SA [redacted] Date dictated 10/6/71

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/8/71

1

[redacted] State Air Administrative Assistant, Tennessee Air National Guard, Nashville, Tennessee, was interviewed at the Tennessee Air National Guard facility and furnished the following information:

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[redacted] provided the military record for GEORGE MALLORY GIFFE, JR., SN AF 25355391, which reflected the following information:

GIFFE enlisted in the Tennessee Air National Guard 118 Tactical Hospital on December 3, 1954, at Berry Field, Nashville, Tennessee, for period of three years.

On a Report of Medical History dated December 3, 1954, GIFFE listed his address as 244 East Tanksley Avenue and stated that he had no physical or mental problems other than having been treated by [redacted] for colds. GIFFE also stated that he had had a severe reaction to typhoid-paratyphoid immunization several years previously.

On the Medical Report dated December 3, 1954, signed by [redacted] GIFFE was certified that he was qualified for general services with a recommendation of a waiver of 20 pounds for being overweight.

GIFFE's wife was listed as [redacted] age [redacted] in 1954.

GIFFE was promoted to Airman 3rd Class on July 25, 1955, GIFFE's job was listed as a medical helper and he advanced to apprentice medical services specialist on May 21, 1956. He was subsequently promoted to Airman 2nd Class on June 8, 1956.

GIFFE was discharged from the Tennessee Air National Guard and from the Air Force Reserve December 10, 1956, for medical reasons. There is no further information available in this record as to the medical reasons listed.

[redacted] noted that the full records have been forwarded to the Air Force Records Center, 9700 Page Boulevard, St. Louis, Missouri.

Interviewed on 10/5/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] Date dictated 10/6/71

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lastly stated that GIFFE's Air Force Reserve personnel record card for retention, promotion, and retirement recorded that GIFFE had attended or made up all drills required of him during his enlistment period.

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/8/71

1

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[redacted] Tactical Hospital, Tennessee Air National Guard, was interviewed at the Air National Guard facility, [redacted] Field, Nashville, Tennessee, and provided the following information:

[redacted] stated that he is employed by the Tennessee Air National Guard as an air medical technician on a full-time basis. He has been working for them since January, 1953. Accordingly, he recalled Mr. GEORGE GIFFE when he was a member of the Air National Guard for two years in 1954 through 1956. [redacted] stated he recalled GIFFE inasmuch as GIFFE was a most unusual person. When GIFFE attended the first drill, he was poorly adjusted to the Tennessee Air National Guard.

[redacted] noted that GIFFE tried to impress everybody with his superior intelligence. Inasmuch as GIFFE was having trouble with the Air National Guard, GIFFE's father, [redacted] understood to be an officer in one of the branches of the military of the United States services, started contacting Air National Guard in order to get some kind of help for his son. He also remembered at that time GIFFE was having marital problems with his wife. He also noted that GIFFE and his father appeared to him to be "super patriotic people."

During the course of GIFFE's enlistment with the Tennessee Air National Guard and his subsequent problems, [redacted] had several conversations with both GIFFE and his father. He found out that at that time GIFFE was receiving psychiatric care from a psychiatrist in Nashville whose name he cannot recall. Subsequently as a result of a combination of GIFFE's mental problems, his receiving psychiatric care, and both GIFFE and his family wanting him out of the Tennessee Air National Guard, GIFFE received a discharge in 1956 for medical reasons.

[redacted] noted that he did not see GIFFE then until approximately one and a half years ago when he happened to run into GIFFE at a local theater lobby during

Interviewed on 10/5/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] Date dictated 10/6/71

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intermission. [] noted that GIFFE was the same overpowering person that he had remembered him to be in the Air National Guard. He noted that his personality was approximately the same as when he had been in the Air National Guard.

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[] lastly stated that he felt that back in 1954 and 1956 while GIFFE was in the Tennessee Air National Guard, he was in definite need of psychiatric care to help with his mental problems at that time.

FEDERAL BUREAU OF INVESTIGATION

1.

Date of transcription 10/12/71

[redacted]
advised as follows:

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[redacted]

GIFFE joined the Air National Guard in about 1956 and after being in for a year or two, was discharged after having an emotional upset during a six-week National Guard camp session. He never confided in her as to the nature of his emotional upset and she knows none of the details of this upset.

Although GIFFE liked to read palms and studied palmistry, she felt this was done by GIFFE as a way to show off.

During [redacted] GIFFE exhibited an unpredictable and violent temper. Once he knocked holes in a door with his fists during a fit of rage. [redacted]

[redacted]

In her estimation, GIFFE was very insecure and always needed to be surrounded by other people. He always needed to be in the "limelight." She does not believe he ever consulted with a psychiatrist, but believes that after he was discharged from the Air National Guard, he consulted [redacted] a family doctor of GIFFE and his parents, concerning his emotional problems.

He was an instructor in the biology department at Peabody College, Nashville, until about 1963 or 1964, and after leaving there, he opened the Global V Realty Company with a partner named [redacted] GIFFE also owned

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Nashville, Tennessee

Memphis 164-76

Interviewed on

SA [redacted]
SA [redacted]

Jacksonville 164-103

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by _____

Date dictated _____

2.
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an export-import business called Verstand, which dealt with clothing bags, umbrellas, and novelties.

[redacted]
[redacted] He met SUSAN LAKICH on the Peabody campus and he subsequently married her on December 21, 1968. In June of 1968, [redacted]

[redacted] GIFFE told her he would be in Atlanta, Georgia, during that time and told her to stop at his hotel on the way back to Nashville. She recalls stopping there in Atlanta on June 21, 1968, at which time she saw SUSAN LAKICH in an adjoining hotel room. GIFFE was apparently surprised that she actually showed up at the hotel [redacted]

[redacted] GIFFE had another girl friend named [redacted] (maiden name unknown), who married a [redacted]

[redacted] The last she heard of the [redacted] they were living in or near [redacted]

[redacted] She recalls [redacted] was a blonde. Once he brought [redacted] with him and bragged about [redacted] to her. GIFFE often bragged to her about his charm and appeal to other women [redacted]

After [redacted]
[redacted] she noticed he appeared to become more emotionally sick and she tried to discourage his visits [redacted]

One reason she felt he was becoming more emotionally disturbed [redacted] was because he started carrying a gun on him at all times and he frequently

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"flashed" this gun. During [redacted] [redacted] GIFFE had a gun, but carried it only on trips, stating he took it for protection. She also recalls he got a special commission badge which he stated he got from Chief KEMP of the Nashville Police Department.

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[redacted] They also had several discussions [redacted] during which he became enraged. He once told her he could have her "taken care of" and she asked him if he meant to have her killed. He said that was what he meant but that he would not have to do it himself as he had friends who would not hesitate to do anything he asked. On two separate occasions, he made threats to her life, [redacted]

[redacted] When he made these threats, she was in fear of her life because GIFFE was very unpredictable. She advised she was very frightened of him.

She last saw GIFFE about a month and a half ago when he came to their residence at the request of [redacted] who asked GIFFE to come over to discuss the fact that [redacted] had started calling the [redacted] residence frequently.

On one of his visits [redacted] GIFFE had a black eye and scratches and he stated SUSAN threw a lamp at him in Atlanta, Georgia, when he winked at a waitress. On a few other occasions after GIFFE and SUSAN were married, he told her he and SUSAN had fought and she had scratched him up.

GIFFE occasionally would throw out hints to the effect that he was with the "Mafia" and that everything he did was secret. He never discussed his business dealings with her. To her knowledge, he was never involved in any criminal activities.

After [redacted] he mentioned having a Swiss bank account, but to her knowledge, he did not have one. He once told her that he was to meet a Mr. (first name unknown) [redacted] and the two of them were to fly somewhere to meet someone to obtain money to be deposited in a Swiss bank, but she never learned any of the details concerning this and does not know if it actually took place.

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She does not know [redacted] and never
heard GIFFE mention anyone named [redacted]

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On October 4, 1971, [] Clerk, Central Records Division, Nashville Metropolitan Police Department, advised that she located a record in her files on GEORGE M. GIFFE, JR., a white male, born July 11, 1937, residence 324 Gaywood Drive, Tennessee Drivers License No. 1909698. [] advised that GIFFE has the following accident records:

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<u>Date</u>	<u>Charge</u>
September 11, 1965	Accident - no arrest
September 7, 1966	Accident - arrested
October 9, 1967	Accident - no arrest
October 11, 1968	Accident - no arrest.

[] advised that this individual was also cited on four occasions for traffic citations as follows:

September 7, 1966	Improper signal - no disposition
September 16, 1964	Speed restriction - fined \$15
July 27, 1965	Stop light - fined \$12
December 30, 1965	Red light violation - fined \$20.

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VII DETAILS OF BACKGROUND INVESTIGATION
ON SUBJECT

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FEDERAL BUREAU OF INVESTIGATION

1

Date 10/8/71

[redacted]

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[redacted] advised [redacted] just opened the Labri Lounge, 1212 Jo Johnson, Nashville, Tennessee, and operates the lounge with a partner [redacted]

[redacted] who resides in [redacted]

[redacted] She described [redacted] as follows:

Race

White

Sex

Male

Date of birth

[redacted]

Place of birth

Hair

Dark brown

Eyes

Brown

Height

6' 2"

Weight

260 pounds

Peculiarities

Wears mustache

Education

Graduated from [redacted]
High School, [redacted]

Military service

U. S. Navy from Summer of 1957
to Spring of 1961

She met [redacted] in the summer of 1959 [redacted]

[redacted] is a part-time student and had no regular employment until he opened the Labri Lounge.

[redacted] was casually associated with GEORGE GIFFE and Mr. GIFFE was to invest some money in the Labri Lounge. She has met Mr. GIFFE on one occasion and has received a number of telephone calls for [redacted] from GIFFE. She has also met Mr. GIFFE's wife SUSAN on one occasion and recalls that GIFFE, who first associated with [redacted] approximately three months ago, came by the apartment one day looking for [redacted]

On 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76

by SA [redacted] MM:Plc Date dictated 10/7/71

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[] came home from the Labri Lounge some time during the early morning hours of October 3, 1971, and went to sleep. At approximately 12:00 noon on October 3, 1971, [] left the apartment saying he was going back to the lounge to clean up. [] returned to the apartment at approximately 5:00 PM to bathe and later that evening, at a time unrecalled, [] left the apartment again for the Labri Lounge. She has not seen or heard from [] since he left the apartment on October 3, 1971, and she related that [] failure to return to the apartment was indeed unusual. When she awoke on the morning of October 4, 1971, and left for work she noticed that her automobile, a gray Opel, was parked at the apartments which indicated to her that [] returned some time during the night and left the automobile.

Approximately ten minutes ago [] told her that [] left the Labri Lounge at approximately 1:00 AM, October 4, 1971, with GEORGE GIFFE to conclude some sort of business deal. She was not aware that [] was in custody at Jacksonville, Florida, until she was informed by the interviewing Agents.

FEDERAL BUREAU OF INVESTIGATION

Date 10/8/71

1

✓ [redacted] University of Tennessee, Nashville, furnished the following information:

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A review of his records reflects that [redacted] [redacted] formerly attended the University of Tennessee facility at Nashville. He first entered the University of Tennessee in the winter session of 1968, attended the spring of 1968, the spring of 1970, the summer of 1970, the fall of 1970, the winter of 1971, and the spring of 1971. [redacted] is presently not in school.

The records reflect that [redacted] is a veteran, having served in the U. S. Navy under Navy Serial Number [redacted] and was discharged May 19, 1961, with the rating of AE-3, after having entered the service on May 24, 1957. His primary military occupation specialty is listed as AE0000. His military home of record is Cottontown, Tennessee.

He is described as follows:

Race	White
Sex	Male
Date of birth	[redacted]
Height	6'1"
Weight	217
Hair	Brown
Eyes	Brown
Marital status	Married
Social Security No.	[redacted]
Selective Service No.	[redacted]

At the time he first attended the University of Tennessee he listed his address as [redacted]

[redacted] This address was thereafter changed to [redacted] At the outset of his college studies he carried engineering as a major but he changed in the fall of 1970 to liberal arts. He is an average student, maintaining a 2.3 grade average based on a 4.0 system. He attended [redacted] High School, having been graduated in [redacted]

On 10/4/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] Date dictated 10/6/71

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On October 4, 1971, [redacted] Clerk, Central Records Division, Nashville Metropolitan Police Department, advised she was unable to locate any record in her files identifiable with [redacted]

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On October 4, 1971, [redacted] Department of Public Safety, Drivers License Division, State of Tennessee, advised that she located a record of a drivers license for [redacted] born [redacted] 6 feet 2 inches, 238 pounds, brown hair, brown eyes, male, white, having Tennessee License number [redacted] Records indicate [redacted] resides at [redacted]
[redacted]

ME 164-76

VIII INVESTIGATION REGARDING ASSOCIATES OF
SUBJECT GIFFE AND SUBJECT

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FEDERAL BUREAU OF INVESTIGATION

1

Date October 8, 1971

[redacted] employed by [redacted] advised he recently opened, with [redacted] the Labri Lounge at 1212 Jo Johnson, Nashville, Tennessee. Approximately four weeks ago he and [redacted] met GEORGE GIFFE and Mr. GIFFE agreed to supply some capital for the Labri Lounge. Mr. GIFFE suggested that he and [redacted] obtain a corporate charter prior to GIFFE's investment, and if the business became successful, GIFFE would then acknowledge his association with the Labri Lounge. He recalls he met GIFFE's wife SUSAN on one occasion; however, he cannot recall where he met SUSAN GIFFE.

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On the night of October 2, 1971, the Labri Lounge was first opened and he recalls seeing GIFFE for a short while at the opening. He and [redacted] closed the lounge at approximately 3:00 AM on October 3, 1971, and they both went home. At approximately 12:00 noon on October 3, 1971, he saw [redacted] in the lounge of the apartment. [redacted] told him that he [redacted] was going to the lounge to clean up. He went to the lounge at approximately 5:00 or 5:30 PM and at approximately 6:00 PM [redacted] left the lounge to go home and bathe. He recalls that [redacted] returned to the lounge at approximately 7:30 or 8:00 that evening and [redacted] remained at the lounge. At 8:00 PM he left the lounge to pick up a waitress and at 8:45 PM he returned to the lounge with the waitress. [redacted] was still at the Labri Lounge and stayed there until approximately 12:00 Midnight.

At approximately 12:00 Midnight [redacted] left the lounge claiming that he [redacted] would return shortly. [redacted] was alone when he left the lounge, and presumably someone must have picked [redacted] up. The reason he believes this is that he had the keys to the automobile [redacted] was driving and the automobile was still parked outside the lounge when he closed the lounge to go home. He drove [redacted] automobile back to the apartments and parked it in its usual spot.

On 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76

by SA [redacted] Date dictated 10/7/71

ME 164-76

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He recalls that GEORGE GIFFE came by the lounge at approximately 7:30 or 8:00 on the evening of October 3, 1971, and he believes [] may have been in the lounge when GIFFE came in. He does not believe that GIFFE stayed at the lounge very long and believes that GIFFE merely drank a beer and left. Some time during the evening of October 3, 1971, [] mentioned that he [] might be driving GIFFE's automobile for the next few days. [] indicated that GIFFE was leaving town for a while, and GIFFE was going to invest \$2,500 in the Labri Lounge some time before Tuesday. He got the impression that GIFFE has a great deal of money acquired through business investments.

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On the morning of October 4, 1971, [] [] came by his apartment to obtain the key to her car that [] left at the Labri Lounge. This is the first time that he realized that [] had not come home the previous evening and to keep [] from worrying he told [] that [] left the previous evening with GEORGE GIFFE on a business deal.

He was not aware that [] was in custody at Jacksonville, Florida, until informed by the interviewing Agents.

FEDERAL BUREAU OF INVESTIGATION

1.

Date October 8, 1971

	an employee of

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advised as follows:

During the early summer of 1971 she attended a party at the apartment of GEORGE GIFFE, JR., together with several other individuals and met GIFFE for the first time.

Subsequent to that time GIFFE telephoned her on numerous occasions and on several occasions she had dinner with GIFFE and on Friday preceding Labor Day of 1971 she flew to Atlanta, Georgia, and met GIFFE at the Atlanta airport after which she registered at the Marriott Hotel in Atlanta. GIFFE occupied a room adjacent to hers and the purpose of the trip was to discuss employment of her by GIFFE with the Cade, Inc., a concern she understood was supplying building materials to construction firms and also engaged in the real estate business.

During conversations with GIFFE during her association with him, she understood that he owned Cade, Inc. and that the firm planned to open an office in Atlanta and GIFFE was attempting to employ her in the Atlanta office.

She remained in Atlanta overnight and returned to Nashville by airplane on Saturday, September 4, 1971, and since that time has received several calls from GIFFE but has not been out with him socially.

She understood in conversation with GIFFE that he was engaged in business with a man known to her only as [redacted] and that the Cade Company planned to sell sand and gravel in the state of Georgia through the Atlanta office which GIFFE planned to open.

On 10/4/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] SA [redacted] WMH:lfm Date dictated 10/7/71

She also understood that [] a resident of the Bavarian Apartments where GIFFE resided, was also a partner in Cade, Inc., but she did not know this to be a fact.

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During her conversation with GIFFE he mentioned the fact that he was employed by CIA and that at some future date it would be arranged for him to "disappear", possibly in an airplane accident, but that actually he would not be killed, but would assume false identification to conceal his work with CIA.

GIFFE was a "big spender" and on several occasions she observed a large amount of money in his possession, but she assumed that this was money obtained through his operation of Cade, Inc., and she did not question him as to the source of his money.

GIFFE frequently spoke of going to South America and Spain and she assumed that this was in connection with his employment, but she did not question specifically as to his travels to these particular places.

GIFFE was known to always carry a small pistol in the console of the automobile which he drove, but she never observed a gun on GIFFE's person when they were away from the automobile.

She knew that GIFFE and his wife, SUSAN, were separated and on occasion GIFFE made the remark that his wife spent more money than he could make, but he did not appear to be upset over the separation and seemed to accept the fact that he and his wife were unable to live together.

In her opinion, GIFFE was a "different type of person" in that he was a "big talker" and she did not place a lot of emphasis on any remarks which he made. He was, in her opinion, a "big operator" and obviously attempted to impress people by his conversation regarding his business activities and travels.

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On one occasion she observed a cigarette lighter in his possession bearing the name of "Butterfield" and she believes that she recalls overhearing GIFFE make some statement to the effect that he had a bank in the Bahamas by this name.

She is not acquainted with any of GIFFE's associates other than [redacted] and is not acquainted with any of GIFFE's girlfriends whom he may have dated in Nashville. She knows nothing concerning his business activities other than that information furnished to her by GIFFE and, as previously indicated, did not know the source of his income.

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On September 27, 1971, she received a telephone call from GIFFE stating that he was going to Spain and this was the last contact she had from GIFFE and assumed that possibly he had left the country inasmuch as he frequently mentioned traveling abroad in connection with his business activities.

She understood that GIFFE had attempted to call her on Sunday, October 3, 1971, but she was not at the apartment and she did not talk to him on this date.

[redacted] concluded by stating that she did not consider herself to be the "girlfriend" of GIFFE as she was not interested in him and actually only dated him on three or four occasions.

FEDERAL BUREAU OF INVESTIGATION,

Date 10/8/71

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[redacted]
[redacted] of LaDainty Cosmetics, Inc., 617 7th Avenue South,
Nashville, advised as follows:

He was a personal associate, as well as business associate, of GEORGE M. GIFFE, JR., whom he first met in early April 1971 at a business meeting at the Parkway Towers, Nashville. He was introduced to GIFFE by [redacted]

[redacted] Also at this meeting was [redacted] who has since become employed at a Ramada Inn Motel, Knoxville, Tennessee. [redacted] then had the idea for starting the Cooperative American Development Enterprise, shortened to CADE Corporation, Marietta, Georgia, which was to be the corporation involved in the excavation of sand and gravel. GIFFE subsequently took an active part in the CADE Corporation and was an officer. Other officers are himself [redacted]

[redacted] Judge GEORGE DUGGER of Elizabethton, Tennessee; and Attorneys [redacted] both of Nashville. The CADE Corporation is currently chartered in Tennessee. Those who have invested money in this corporation are [redacted], an assistant football coach at Fisk University, Nashville; [redacted] Fisk University; [redacted] a neighbor of GIFFE's; and [redacted] a friend of GIFFE's.

He has been acquainted with [redacted] who, about two months ago, came to him and stated he [redacted] [redacted] were opening the Labri Lounge, 12th Avenue North at Jo Johnson Streets, Nashville. [redacted] inquired of him as to how the Labri Lounge could be financed and he [redacted] suggested they incorporate and sell shares of stock. He and GIFFE put [redacted] in touch with Attorney [redacted] who instituted proceedings to incorporate the Labri Lounge. About five weeks ago he [redacted] introduced GIFFE to [redacted] and he does not believe they knew each other prior to this meeting.

On 10/5/71 at Nashville, Tennessee

File # Jacksonville 164-103
Memphis 164-76

by SA [redacted]
SA [redacted]

Q:jlg

Date dictated 10/7/71

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This past Friday, October 1, 1971, he, [redacted] and [redacted] conferred with an officer of the Third National Bank, Green Hills Branch, Nashville, concerning the obtaining of a loan for the Labri Lounge. GIFFE accompanied the three of them to the bank but stayed outside in a car inasmuch as he owed the bank money and did not want to be seen in the bank. The banker told [redacted] to return to the bank at 8:15 A.M., Monday, October 4, 1971, and [redacted] and [redacted] requested that he [redacted] accompany them there. He thus arrived at the Green Hills Branch of the Third National Bank at about 8:15 A.M. on October 4, 1971, and after waiting about five minutes left because he saw no sign of [redacted] or [redacted]. He subsequently was telephoned by [redacted] who told him of GIFFE's death on October 4, 1971, at Jacksonville, Florida.

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Since meeting GIFFE in April, 1971, he was in almost daily contact with GIFFE and he and his wife socialized with GIFFE and GIFFE's wife, SUSAN. He considered GIFFE to have a deep-seated inferiority complex because of his weight, although he did not consider GIFFE to be particularly mentally unstable. GIFFE did a lot of talking about himself, but he never inquired of GIFFE concerning the matters GIFFE would talk about and thus he never knew how much truth there was to GIFFE's statements.

During the six months he had known GIFFE, he knew SUSAN GIFFE to have left GIFFE on a couple of occasions, each for several days. On Friday, September 24, 1971, GIFFE traveled to Chattanooga, Tennessee, and bought a Cadillac automobile. When he did not hear from GIFFE for several days, he called SUSAN GIFFE's mother, on Sunday, September 26, 1971, in efforts to locate GIFFE, and learned from SUSAN's mother that SUSAN had left GIFFE on Friday, September 24, 1971. On Monday, September 27, 1971, GIFFE got back in touch with him and said that he (GIFFE) was not aware that SUSAN had left him on September 24, 1971. He is of the opinion that SUSAN left GIFFE because of GIFFE's financial problems.

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During the week following SUSAN's separation from him, GIFFE was despondent. On Tuesday, September 28, 1971, he and GIFFE flew to Atlanta, Georgia, to confer with [redacted] from Washington, D. C., and [redacted] of John Grissom and Associates, also of Washington, D. C., concerning the CADE Corporation. On Wednesday, September 29, 1971, GIFFE flew back to Nashville because his mother was sick in a Nashville hospital, while he [redacted] remained in Atlanta until Thursday, September 30, 1971, when he flew back to Nashville and was met at the Nashville airport by GIFFE. On this Thursday, GIFFE appeared despondent over SUSAN's separation, his debts, and the sickness of his mother. GIFFE stated he had been to SUSAN's mother's residence that morning, September 30, 1971, at which time SUSAN's mother began picking on him for messing up SUSAN's life, whereupon SUSAN told her mother she was sick of hearing this and was sorry she had left GIFFE. GIFFE also said he had gone to SUSAN's mother's house because SUSAN had called him and he stated SUSAN was going to come back to him. However, he does not know whether or not GIFFE was telling the truth about going to SUSAN's home.

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On Friday, October 1, 1971, he told GIFFE he would be on hand at the Labri Lounge for its opening on Saturday, October 2, 1971, and GIFFE made arrangements to pick him up at his home at 8:00 P.M. on October 2, 1971. However, he and his wife subsequently decided to go to a movie on Saturday night and at about 6:30 P.M. to 7:00 P.M. on that night he attempted to phone GIFFE at GIFFE's apartment in the Bavaria Apartments, but could not reach GIFFE. On the way home from the movies, Saturday night, he stopped at the Labri Lounge at about 9:30 P.M. and saw [redacted] and GIFFE there. GIFFE was seated at the bar and was in a much better mood than at any time during the preceding week. [redacted] were also in good moods. GIFFE was in the company of [redacted] (phonetic), a white female about 25 - 26 years old, whom he had seen at several parties in the GIFFE apartment. GIFFE then accompanied him to the [redacted] residence in order to drop off [redacted] whereupon he and GIFFE then returned to the Labri Lounge, where he stayed until about 11:00 P.M. to 11:15 P.M. on this Saturday night. GIFFE appeared optimistic

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✓ concerning the chances of achieving success with the CADE Corporation in Marietta, Georgia, and he kept saying, "We're going to make it". When he [redacted] left the Labri Lounge, GIFFE stayed there, and he and GIFFE promised to call each other on Sunday, October 3, 1971. b6 b7C

On Sunday, October 3, 1971, he did not hear from GIFFE and thus at about 8:30 P.M. on that day he attempted to telephone GIFFE at GIFFE's apartment but the line was busy. He called about 30 to 45 minutes later and on this occasion got no answer and did not make any further attempts to call GIFFE that night. Thus, the last contact of any kind he had with GIFFE was Saturday evening, October 2, 1971, at the Labri Lounge.

He has no explanation whatsoever as to why [redacted] [redacted] accompanied GIFFE to Jacksonville, Florida, on October 4, 1971, as to his knowledge they were not that close of friends. He has no explanation as to why GIFFE would kill himself and his wife other than GIFFE's apparent despondency during the previous week.

During the six months he knew him, GIFFE indicated he felt he had some abilities in extra sensory perception (ESP) although he does not believe this strongly influenced GIFFE's life. GIFFE apparently studied palmistry and he was with GIFFE on several occasions when GIFFE would read someone's palm. He recalls GIFFE once reading the palms of waitresses at a restaurant in Georgia.

He recalls that GIFFE carried a card allegedly showing he was a member of the International Police Force (Interpole) and also carried a badge which GIFFE said authorized him to carry a gun in Nashville. GIFFE stated he had the lowest badge number in Nashville. GIFFE carried a PPK pistol on his person continually. GIFFE also carried a card alleging he was a Black Belt Karate Expert.

Concerning the Continental Research Company, [redacted] advised GIFFE told him this was the company he ran before he knew GIFFE, but he knows nothing more about this company except that the offices of Continental Research were apparently in the Parkway Towers, Nashville.

JK 164-103

ME 164-76

5

[] advised he was former basketball coach at Tennessee State University, Nashville, until 1968 and GIFFE referred to him as [] was then shown the original of a letter in an envelope marked [] which letter was found in GIFFE's automobile at the Nashville airport on October 4, 1971, by the Metropolitan Police Department. After reading this letter, [] acknowledged it appeared to be GIFFE's handwriting and authorized the interviewing Agents to keep the original of this letter. A copy of the letter was furnished to [] Concerning a person named [] mentioned in this letter, [] advised GIFFE frequently talked about a [] but never mentioned a last name. GIFFE frequently stated he wanted him [] to meet [] but on Thursday, September 30, 1971, when GIFFE picked him up at the Nashville airport, GIFFE said [] told him (GIFFE) he wanted GIFFE and [] to know each other longer before he [] met [] Then GIFFE told him that there was no such person as [] He never questioned GIFFE concerning [] and he considers [] to be an imaginary person in GIFFE's mind, but he has no idea why GIFFE needed this imaginary person although he believes [] was a father image to GIFFE.

b6
b7C

Concerning GIFFE's mentioning of an "order" in this letter, [] advised he has no idea as to what GIFFE was referring. Concerning GIFFE's mentioning a Swiss account in the letter, [] advised that GIFFE frequently mentioned having money in a Swiss bank but he never knew of such an account ever existing or whether or not this was another fictitious statement made by GIFFE.

Concerning mention in the letter of a [] advised GIFFE talked of a [] as being the most beautiful blond he had ever known. He never mentioned [] last name but once in SUSAN GIFFE's presence, GIFFE mentioned that SUSAN had met [] and had a fight with her. SUSAN GIFFE acknowledged this was true.

JK 164-103

ME 164-76

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b7c

Concerning GIFFE's mentioning in the letter that SUSAN could not handle information about GIFFE, [] advised he does not know what GIFFE meant by this. However, he advised GIFFE had remarked that he has never told SUSAN or his mother-in-law of his activities as it was none of their business.

[] advised GIFFE always spoke of his great love for SUSAN and that GIFFE was extremely jealous of anyone who even looked at SUSAN.

[] advised GIFFE was deeply in debt although he knows no details of this except that GIFFE owed money to Nashville banks and GIFFE once recently mentioned he wanted to declare bankruptcy.

[] also advised that a [] of the Geology Department at the Colorado School of Mines, was interested in the CADE Corporation, however, [] subsequently decided not to become involved in this corporation. [] advised he never met [] but stated he and GIFFE corresponded with [] and talked to him on the telephone during May, 1971. He also advised that [] was going to put up matching funds of \$500,000 for the CADE Corporation but during mid-August, 1971, it was determined that the money [] was going to use for these matching funds was tied up and could not be used as a security for the CADE Corporation.

FEDERAL BUREAU OF INVESTIGATION

Date 10/8/71b6
b7C

[redacted]
[redacted] advised as follows:

Her husband was a business and personal associate of GEORGE M. GIFFE, JR. and her husband had known GIFFE for about the last six months. She and her husband had associated with GIFFE and his wife SUSAN on several occasions in the last six months. Her husband and GIFFE were attempting to develop the CADE Corporation at Mariette, Georgia, which was to be a sand and gravel business.

During the six months that she was acquainted with the GIFFES, she understood that SUSAN GIFFE left her husband on at least one occasion prior to SUSAN's leaving her husband during the last week in September, 1971. She believes that SUSAN left GIFFE because of GIFFE's financial problems, including the fact that SUSAN did not have her own car, and that GIFFE did not have a steady job. She recalled that SUSAN was in daily contact with her (SUSAN's) mother. She recalled that whenever GIFFE would take a business trip, SUSAN went with him, and she got the impression that the GIFFES' marriage was a fairly normal one. She recalled GIFFE as being a very sensitive and emotional person, although he was normally in a joking mood. GIFFE carried a PPK automatic pistol on his at all times.

The last time she saw GIFFE was on Saturday evening, October 2, 1971, at approximately 11:30 P.M., when she and her husband went to the Labri Lounge at 12th Avenue North and Jo Johnson Street. Although she did not go into the lounge, her husband brought GIFFE to the car, at which time GIFFE appeared to be in his normal mood and did not appear to be despondent. There was a girl named [redacted] (Last Name Unknown), a white female about 24 - 25 years old, with GIFFE. She had seen this [redacted] on several occasions at parties at the GIFFE apartment in the Bavaria Apartments, Nashville.

On 10/4/71 at Nashville, Tennessee File # Jacksonville 164-103
Memphis 164-76

by SA [redacted] AHQ:jlg Date dictated 10/7/71

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

JK 164-103

ME 164-76

2

[redacted] were partners in the Labri Lounge, and her husband met [redacted] through [redacted] a couple of months ago when [redacted] came to her husband concerning the possibility of making the Labri Lounge a corporation. Her husband then introduced [redacted] and [redacted] to GIFFE about a month or two ago and she believes that since this meeting, GIFFE and [redacted] did not become particularly close friends. She, herself, first met [redacted] [redacted] approximately Labor Day, 1971.

b6
b7C

She recalled that GIFFE frequently joked about his abilities in witchcraft, although she believes that he was never serious about witchcraft. She knows of no associate of GIFFE's named [redacted] but her husband once told her that GIFFE mentioned having a Swiss bank account. She had no idea as to whether GIFFE actually had such an account because GIFFE was the type of person who would do a lot of talking about himself but she could not tell if all the things he would say were true. She advised that GIFFE would drink quite a bit when they were together socially, although she never saw him become drunk. She advised that although she considered GIFFE to be a very emotional person, she did not consider him to be particularly mentally unstable based on the several personal contacts she had with GIFFE.

She advised GIFFE had an associate from Louisiana named [redacted] although she advised she is not sure of the spelling of either of [redacted] names. She advised that she and her husband went to several of GIFFE's parties at the Bavaria Apartments and on each occasion most of the people at the parties were new to her although she does recall that [redacted] were at all the parties. She advised that the [redacted] lived across the hall from the GIFFEs.

ME 164-76

IX MISCELLANEOUS

On October 8, 1971, United States Attorney CHARLES H. ANDERSON, Middle District of Tennessee, Nashville, Tennessee, advised that he has been following all aspects of this case with the U. S. Attorney in Jacksonville, Florida. Mr. ANDERSON advised that a preliminary hearing for [REDACTED] has been set for October 14, 1971, at Jacksonville, Florida, before a U. S. Magistrate there.

b6
b7C

FEDERAL BUREAU OF INVESTIGATION

Date 10/8/71

1

[redacted] advised that he is the only authorized dealer in the state of Tennessee that is licensed by the federal government, state government, and local government to sell automatic weapons. He advised a review of his files did not reflect that any weapons were sold to GEORGE M. GIFFE, JR., or [redacted]

b6
b7COn 10/4/71 at Nashville, Tennessee File # Memphis 164-76by SA [redacted] Date dictated 10/6/71

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

FEDERAL BUREAU OF INVESTIGATION

Date 10/8/711

[redacted]
telephone number [redacted]
of Gun City U.S.A., 573 Murfreesboro Road, Nashville,
Tennessee, advised that firearms transaction record number
7055 reflects the following information:

b6
b7C

Name	[redacted]
Address	4501 Packard Drive
Date of birth	July 11, 1936
Purchase	Pistol
Caliber	.38
Model	PPK-S
Make	Walther
Serial Number	151170
Date	September 24, 1971

[redacted] stated that he did not know GEORGE M.
GIFFE or [redacted]. He could furnish no further
information.

On 10/4/71 at Nashville, Tennessee File # Memphis 164-76

by SA [redacted] Date dictated 10/6/71

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Bishop *[initials]*

DATE: 11/2/71

FROM : G. E. Malmfeldt *[initials]*

SUBJECT:

WINTER HAVEN, FLORIDA

HERMOSA BEACH, CALIFORNIA

Tolson _____
Felt _____
Rosen _____
Mohr _____
Bishop *[initials]*
Miller *[initials]*
Callahan _____
Casper _____
Conrad _____
Dalbey _____
Cleveland _____
Ponder _____
Bates _____
Tavel _____
Walters _____
Soyars _____
Tele. Room *b6*
Holmes *b7C*
Gandy _____

The purpose of this memorandum is to recommend no acknowledgment be made of letters received from [redacted] on 10/28 and 10/29/71, respectively.

[redacted] has written to President Nixon and [redacted] to the Attorney General protesting the action taken by the FBI with respect to the hijacking of a chartered aircraft to Jacksonville, Florida on 10/4/71. Both letters were referred to the Bureau. [redacted] expresses his opinion that the Agent who was responsible for the death of the pilot should be fined and states it was murder on his part. [redacted] suggests the Attorney General file charges against the Director and the Bureau for murder or manslaughter over this incident.

Bufiles contain no record of [redacted] is not identifiable.

REC 43

Neither letter asks questions about this incident and both are rather peremptory in their tone. In view of the tenor of their comments no response would satisfy them and it is not felt one is warranted in either instance.

RECOMMENDATIONS:

- (1) That neither of these letters be acknowledged.

(1) Mr. Malmfeldt

JBT:hmp (3)

61 NOV 15 1971

CRIME RESEARCH

Mr. Tolson ✓
 Mr. Felt ✓
 Mr. Rosen ✓
 Mr. Mohr ✓
 Mr. Bishop ✓
 Mr. Miller, E.S. _____
 Mr. Callahan _____
 Mr. Casper _____
 Mr. Conrad ✓
 Mr. Dalbey ✓
 Mr. Cleveland ✓
 Mr. Ponder ✓
 Mr. Bates ✓
 Mr. Tavel _____
 Mr. Walters _____
 Mr. Soyars _____
 Tele. Room _____
 Miss Holmes _____
 Miss Gandy _____

DDJ
 gpm

10-18-71

Dear president Nixon,

I feel you should fine the F.B.I. agent who was responsible for the death of that pilot!! (i.e. Jacksonville)

Maffey

That was murder on the part of that F.B.I. agent!! I can't believe such a thing could be done by the fine F.B.I. we have!!!

Sincerely,

[Redacted Signature]

Winter Haven, Fla. 33880)

copy:djk

FBI
 RECEIVED-TECH
 OCT 25 5 00 PM '71

b6
 b7C

Maffey to Bishop memo
11-1-71
WBS/amy

JBT

nmh

Mr. Tolson	_____
Mr. Felt	_____
Mr. Rosen	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Miller, ES	_____
Mr. Callahan	_____
Mr. Casper	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Cleveland	_____
Mr. Ponder	_____
Mr. Bates	_____
Mr. Tavel	_____
Mr. Walters	_____
Mr. Soyars	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

M.D.
EXP. PROC.
 34 OCT 28 1974

38

Exp.

Malinski to Bishop memo
 11-1-71

REC 43

164 -

202 - 1164
 11-5

20 OCT 28 1971

EX-115

61 NOV 15 1971
[Handwritten signature]

CORRESPONDENCE

FEDERAL BUREAU OF INVESTIGATION

OPAR 7

Mr. Tolson	
Mr. Felt	
Mr. Rosen	
Mr. Mohr	
Mr. Bishop	
Mr. Miller, E.S.	
Mr. Callahan	
Mr. Casper	
Mr. Conrad	
Mr. Dalbey	
Mr. Cleveland	
Mr. Ponder	
Mr. Bates	
Mr. Tavel	
Mr. Walters	
Mr. Soyars	
Tele. Room	
Miss Holmes	
Miss Gandy	

DJD
Jim

October 21, 1971

Memo

John Mitchell, Attorney General
Justice Department
Washington, D.C.

Dear Sir:

GEORGE M. GIFFE

As a concerned American Citizen and one who has never written a letter of this nature before, I feel it is my conscientious duty to do so at this time. The enclosed newspaper article from the October 19 edition of the Herald-Examiner is perhaps the most horrid example of mismanagement of a situation that I have ever read. If one ounce of this article is true, I certainly hope that your organization files charges against Mr. Hoover and his organization for murder or manslaughter in the same manner that Lieutenant Calley was tried.

Respectfully,

[Redacted Signature]

b6
b7C

REC 73

EX-115 Hermosa Beach, California 90254

cc: Rep. Alphonzo Bell, 46th District

164-2043-165

11-8

22 OCT 29 1971

CORRESPONDENCE
THREE

ENCLOSURE

6 NOV 15 1971

Malone
11-1-71
Bishop
11-1-71
11-1-71

PILOT'S PLEA FOR LIFE

The Federal Aviation Admi-

When the plane landed at Jacksonville, Downs nervously sought assurance that he would

Pilot: "This is 58 November. Uh, this gentleman has about 12.5 pounds of plastic explosives

Pilot: "Where's the fuel truck?"
Tower: "This is the FBI."

There will be no fuel. There
There will be no fuel. Repeat
will be no starter. (Which Dow
also had requested to get
plane airborne again. "If
you cut your engines"
(pause)
Pilot: "Um, (gasp) I
don't think this fellow's
— I wish you'd get in
truck out here."
Tower: "53 November
will be no fuel." I repeat
will be no fuel.

161-2042-165
ENCLOSURE

George Mallery Giffe Jr

Tolson
Felt
Rosen
Mohr
Bishop
Miller, E.S.
Callahan
Casper
Conrad
Dalbey
Cleveland
Ponder
Bates
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

FAA Defends FBI In Hijack Shooting

By George Lardner Jr.
Washington Post Staff Writer

Federal Aviation Administration officials said yesterday that FBI agents may have had information on a Nashville plane hijacking that warranted their determination to stop the flight in a controversial shootout.

The FBI men, it was suggested, believed that the hijacker, George M. Giffe Jr., intended to kill himself and all four others aboard, perhaps by crashing the plane into the sea on its way to the Bahamas.

The Nashville police reported finding five suicide notes that Giffe had left behind before commandeering the plane. Their contents, officials indicated, may have been relayed to the FBI before the plane landed again at Jacksonville International Airport.

Three persons, including the captive pilot, hijacker Giffe, and his estranged wife, Susan, were killed aboard the plane at Jacksonville where the occupants had been led to believe they could refuel without interference.

Rejecting the pilot's desperate pleas that they stay away from the craft, FBI agents began pumping bullets into its wheels and one of its engines after drawing a burst of gunfire from Giffe, a 300-pound Nashville real estate man who had hijacked the plane at the Nashville airport.

Giffe then turned his .45-caliber automatic on the pilot, Mrs. Giffe, and finally himself. The two others aboard, copilot Randall Crump and

Billy Wayne Wallace, a friend and alleged confederate of Giffe, had jumped off the plane moments before the shooting broke out.

The FBI has refused to comment on the case, saying it is currently "a matter of litigation." Attorneys representing the widow of Brent Q. Downs, the 29-year-old pilot; owner of the plane, Mack P. Brothers Jr., and Mrs. Giffe's family

said in Nashville yesterday that they would seek a federal court order permitting them to question FBI agents and FAA officials about their role in the incident.

According to a transcript obtained by The Washington Post of the last radio transmissions between the pilot and authorities, Downs had been assured several times that a fuel truck would be standing by and that the area would be

differently, he protested to the kept clear. When he found out FBI that they were "endangering lives" and repeatedly asked them not to interfere.

Relatives and friends of Downs and Mrs. Giffe have accused FBI agents of mishandling the case. Brothers, owner of a Nashville flying service that operated the hijacked plane, has maintained that the FBI is "responsible for the deaths."

Officials of the Air Line Pilots Association said yesterday

that the incident, at least on the surface, violated a "gentlemen's agreement" with the FAA that a pilot has command of his airplane "from the time the door is closed until it's open again."

But Capt. Earl R. Waggoner of Los Angeles, a TWA pilot who heads ALPA's flight security committee, said exceptions could and should be made when authorities on the ground have information not

The Washington Post Times Herald
The Washington Daily News
The Evening Star (Washington)
The Sunday Star (Washington)
Daily News (New York)
Sunday News (New York)
New York Post
The New York Times
The Daily World
The New Leader
The Wall Street Journal
The National Observer
People's World

164-2042-A OCT 21 1971

NOT RECORDED

NOV 9

AS APPEARS IN PAPER

57 NOV 10 1971

available to the pilot—“such as suicide notes and other evidence to support their belief it's going to be a suicide and not just transportation.”

An FAA spokesman, Dennis Feldman, said an agreement signed last fall by Secretary of Transportation John A. Volpe and Attorney General John N. Mitchell gives the pilot the final word only when a plane is “in flight” or moving along a takeoff or landing runway.

Under that same agreement, he said, the FBI had full authority in Jacksonville. Feldman said it was his understanding that Giffe's notes, found in the car he left at the Nashville airport, implied that he “wanted to take everybody with him.”

In one of the notes, addressed to his father, Giffe, who reportedly claimed to be a sorcerer, said he had been “ordered to kill.”

FBI spokesman Thomas Bishop said he could not dis-

cuss the case beyond taking exception to a remark reportedly heard in the control tower at Jacksonville after the shootings that “you can't win 'em all.” Sources told The Post that the comment was audible as background conversation on the FAA's tape recordings of transmissions between the pilot and the tower, although it was not contained in the transcript. Bishop said flatly that “there was no such thing on the tapes.”

33

10-18-71

FEDERAL BU. OF INV.

Justified
Dear President Nixon,

C I feel you should fire
the F.B.I. agent who was
responsible for the death of
that pilot!! (i.e. Jacksonville)

That was murder on
the part of that F.B.I. f-
agent!! I can't believe such
a thing could be done by
the fine F.B.I. we have!!!

[Redacted]

Sincerely,

b6
b7C

Winter Haven, Fla.

33880

[Redacted]

GEORGE M. GIFFE

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE MEMPHIS	OFFICE OF ORIGIN JACKSONVILLE	DATE 11/3/71	INVESTIGATIVE PERIOD 10/6/71 - 10/28/71	b6 b7C
TITLE OF CASE GEORGE MALLORY GIFFE, JR., aka (Deceased); SUSAN LAKICH GIFFE, aka - VICTIM (Deceased); BRENT QUINTON DOWNS - VICTIM (Deceased); - VICTIM		REPORT MADE BY SA 	TYPED BY JAP	
		CHARACTER OF CASE CAA - HIJACKING, INTIMIDATION OF CREW MEMBERS, CARRYING A CONCEALED WEAPON; KIDNAPING; FTCA		

REFERENCES:

Jacksonville report of SA 10/16/71.
 Memphis report of SA 10/14/71.

- P -

LEADS:JACKSONVILLE DIVISION

AT JACKSONVILLE, FLORIDA Will follow and report prosecutive
 action against subject

MEMPHIS DIVISION

AT NASHVILLE, TENNESSEE Continue efforts to develop information

ACCOMPLISHMENTS CLAIMED					<input checked="" type="checkbox"/> NONE	ACQUIT- TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		
							PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO

APPROVED

SPECIAL AGENT
IN CHARGE

DO NOT WRITE IN SPACES BELOW

COPIES MADE:

- ④ - Bureau
 1 - USA, Nashville
 3 - Jacksonville (164-103)
 (1 - USA, Jacksonville)
 2 - Memphis (164-76)

164-2042	166	MCT-1
22 NOV 8 1971		REC-46
STAT SECT.		

Dissemination Record of Attached Report

Notations

Agency	1-RAO atten.	
Request Recd.	BNC/AL	1-FAA
Date Fwd.	12/10/71	JFH/la
How Fwd.	1-RAO civil	2012-72
By	JFH/la	destroyed

50 NOV 22 1972

COVER PAGE

ME 164-76

of evidentiary value in this case.

2) Will follow and report results of all civil actions filed in this case.

ADMINISTRATIVE:

Bureau note that this report will summarize all civil actions taken in this case to date, and results of continuing investigation in criminal aspects of this case will be submitted in separate reports under same caption.

JUL 23 1972
XEROXED ORIGINAL
778

COVER PAGE B*

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - U. S. Attorney, Nashville, Tennessee
1 - U. S. Attorney, Jacksonville, Florida

Report of: SA [REDACTED]
Date: November 3, 1971

Office: MEMPHIS

b6
b7C

Field Office File #: 164-76

Bureau File #:

Title: GEORGE MALLORY GIFFE, JR. (Deceased);

[REDACTED]
SUSAN LAKICH GIFFE - VICTIM (Deceased);
BRENT QUINTON DOWNS - VICTIM (Deceased);
[REDACTED] - VICTIM

Character: CRIME ABOARD AIRCRAFT - HIJACKING, INTIMIDATION OF CREW MEMBERS,
CARRYING A CONCEALED WEAPON, KIDNAPING; FEDERAL TORT CLAIMS ACT

Synopsis: On 10/6/71, complaint filed USDC, MDT, Nashville, on behalf of Big Brothers Aircraft, Inc., Nashville, Tenn., praying for temporary restraining order restraining defendants from impairing original condition of tapes and to place tapes in safe keeping with Clerk of Court. Temporary restraining order issued 10/6/71, granting request in complaint filed 10/6/71. Motion filed 10/7/71 adding plaintiff, [REDACTED] widow of deceased pilot. On 10/8/71, order issued by USDC Judge FRANK GRAY, JR., that FAA officials will preserve tapes in original form. Motion filed 10/8/71 on behalf of [REDACTED] defendant in criminal proceedings, to intervene, but denied on same date by USDC Judge FRANK GRAY, JR. On 10/20/71, application was made by petitioners for public disclosure of information and to secure and perpetuate evidence in this case. On 10/21/71, WLAC-TV, Inc., a Tennessee television corporation, filed a motion to intervene. On 10/22/71, WSM, Inc., a Tennessee television corporation, filed motion to intervene. On 10/26/71, petitioners filed motion to amend the petition to perpetuate evidence. On 10/26/71, memorandum of WSM in support of motion to intervene; memorandum in opposition to application for public disclosure of information and petition; and memorandum in opposition to intervention were filed USDC, MDT, Nashville. On 10/28/71, petitioners' memorandum brief; memorandum of WSM, Inc., in support of motion to intervene; and memorandum of WLAC-TV in support of intervention and petition were filed in USDC, MDT, Nashville. On 10/28/71, the Government filed a supplemental memorandum in opposition to motions to intervene, in opposition to application to have transcript made part of public record, and in opposition to petition pursuant to Rule 27, Federal Rules of Civil Procedure, in U. S. District Court, MDT, Nashville.

ME 164-76

On 10/26/71, USDC Judge FRANK GRAY, JR., stated that the Court was not ready to render a decision based upon complaint, motions and petitions, and other memoranda filed in this case, and rescheduled hearing for 11/1/71 at 1:30 P.M.

- P -

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b7C

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United States District Court

FOR THE

MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISIONBIG BROTHER AIRCRAFT, INC.CIVIL ACTION FILE NO. 6322

Plaintiff

SUMMONS

v.
JOHN A. VOLPE, Secretary of the Department
of Transportation of the United States of
America; THE FEDERAL AVIATION ADMINISTRATION,
an agency of the Department of Transportation
of the United States of America, and its
Administrator, JOHN SCHAFFER; and
J. EDGAR HOOVER, Director of the Federal
Bureau of Investigation, an agency of the
Department of Justice of the United States
of America, Defendants
To the above named Defendants:

You are hereby summoned and required to serve upon
Honorable Thomas Wardlaw Steele
and
Honorable Gilbert S. Merritt, Jr.

plaintiff's attorney S, whose address is 23rd. Floor, Life & Casualty Tower,
Nashville, Tennessee

an answer to the complaint which is herewith served upon you, within 60 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

BRANDON LEWIS

Clerk of Court.

Frank Williams

Deputy Clerk.

Date: October 6, 1971

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

Filed Oct 6, 1971
12:07 A.M.
FILED

BIG BROTHER AIRCRAFT, INC.,
Plaintiff

OCT 6 - 1971

v.

BRANDON LEWIS, Clerk

JOHN A VOLPE, Secretary of
the Department of Transportation
of the United States of America;
THE FEDERAL AVIATION ADMINISTRA-
TION, an agency of the Department
of Transportation of the United
States of America; and its
Administrator, JOHN SCHAFFER; and
J. EDGAR HOOVER, Director of the
Federal Bureau of Investigation,
an agency of the Department of
Justice of the United States of
America,

CIVIL ACTION NO. 6322

Defendants

COMPLAINT

1. Jurisdiction of this action is based upon 28 U.S.C. 1651. Venue of this action is conferred upon this Court by 28 U.S.C. 1391(e). Service of process upon the defendants herein, who are sued in their official capacities only, is governed by Rule 4(d)(4) of the Federal Rules of Civil Procedure. This action involves an amount in controversy, exclusive of interest and costs, exceeding the sum of \$10,000.00, and also involves equitable relief under the provisions of 28 U.S.C. 1651.

2. Plaintiff was and is the owner of an aircraft, designated as "Commander 9058N", which was involved in an incident occurring on or around October 4, 1971. Plaintiff is engaged in the business, inter alia, of chartering or renting its aircraft to private persons for hire. It rented such an aircraft, a Hawk Commander manufactured by Rockwell Standard, Inc., purchased by the plaintiff approximately two years ago at a ^{distributor} cost exceeding \$300,000.00, to a private person or persons for a flight from Nashville, Tenn., to Atlanta, Georgia. Included in the charter of said aircraft was the furnishing of a fully qualified

and licensed pilot and co-pilot, employees of the plaintiff.

3. Commencing said charter and ensuing thereafter, said aircraft was forcibly and at gunpoint required to depart Nashville, Tennessee, with an unknown destination in the Bahama Islands. The occupants were three in number, other than the pilot and the co-pilot. Upon information and belief, said occupants consisted of the husband and wife, who were estranged, and an accomplice of the husband, who assisted him in forcing the estranged wife against her will to accompany them upon said aircraft. When said aircraft, under the circumstances described, approached ^{Chattanooga, Tennessee} the International Airport ~~at Atlanta, Georgia~~, ^{IT WAS ORDERED by The husband to proceed to Jacksonville, Fla.} it communicated to the agents and employees ^{for refueling} of the defendant, the Federal Aviation Administration (hereinafter referred to as "FAA") ^{and stated a change of flight plan} the circumstances under which it was traveling and its need for a landing for the purpose of taking on fuel so as to travel to the Bahama Islands under the direction of the said husband who was controlling the movements of said aircraft and its destination under the threat of bodily harm to the pilot and co-pilot, himself and the estranged wife with a pistol.

4. Upon information and belief, when plaintiff's employees, the pilot and co-pilot, requested permission to land at the International Airport at Atlanta, Georgia, for the purpose of refueling, they were directed by employees and agents of the defendant, J. Edgar Hoover, Director of the Federal Bureau of Investigation, not to land or attempt to land at Atlanta, Georgia, but to proceed to Jacksonville, Florida. The employees and agents of the defendant FAA concurred in the advice and directions given to the pilots of the plane by turning over the radio communications to the Federal Bureau of Investigation or, upon information and belief, by giving express directions to said pilots.

5. Upon information and belief, the pilots of the plane proceeded to Jacksonville, Florida, where they landed for refueling before continuing the plane's journey ^{presumably} to the Bahama Islands. ~~Either~~ In the process of landing or upon landing, the pilots of said aircraft had radio communications with the control tower at the airport

in Jacksonville, Florida, which facilities at said control tower were manned by employees and agents of the FAA and the Federal Bureau of Investigation (hereinafter referred to as "FBI"), in which said pilots advised said employees and agents of their need for refueling and of the fact that an estranged husband on board was armed with a pistol, was threatening to kill the pilot, his estranged wife and himself if the plane was not permitted to refuel and continue to ~~the Bahama Islands~~ ^{its destination}. During said conversations, the pilots of the plane warned, if not begged, the agents of the FBI not to shoot at the plane or to engage in resistance to the refueling operation, because of the threat and danger of death or bodily harm at the hands of the estranged husband who had clearly voiced to them said threats. ~~In spite of these warnings, when the plane landed at Jacksonville, Florida, agents of the defendant FBI opened fire upon the aircraft, shooting the tires and one of the engines of the aircraft.~~ ^{they they were not receiving fuel. An FBI agent stated the aircraft would not be permitted to land.} ~~the aircraft, shooting the tires and one of the engines of the aircraft.~~ ^{Apparently} the aircraft, by means of the handgun in his possession, pursuant to the threats previously made, killed the pilot of the plane, his estranged wife and himself.

6. Under the facts hereinbefore alleged, plaintiff has and intends to pursue and prosecute an action for damages against the United States of America under the Federal Tort Claim Act, 28 U.S.C. 2671 et seq., for damages to its personal property, to-wit, the valuable aircraft involved in the incident, and avers that said damages thereto are in excess of the sum of \$100,000.00. This Court has and will have jurisdiction and venue of said action pursuant to 28 U.S.C. 1391(3).

7. Essential to plaintiff's ability to present and prosecute its claim for damages, as aforesaid, and essential to the jurisdiction of this Court to entertain, hear and determine said action, is the preservation of certain vital evidence now in the hands and under the custody and control of employees and agents of the defendant FAA and/or the defendant FBI. The United States of America will be a defendant to such action and such action will involve the culpability

of either or both of the defendant agencies of the United States of America. Said evidence consists of mechanically or electronically recorded tapes of conversations between occupants of the aircraft owned by the plaintiff and employees and agents of the defendants FAA and/or FBI at Nashville, Tennessee, Atlanta, Georgia, Jacksonville, Florida, and perhaps other geographical locations unknown to the plaintiff at the present time. Upon information and belief, plaintiff avers that employees and agents of the defendant FBI have been endeavoring and will continue to endeavor to secure possession and control of said tapes, and plaintiff, at the time of the filing of this suit, does not know whether said tapes have been released to the FBI or remain in the custody and control of the FAA.

8. Plaintiff avers and charges that there is no statute, rule or regulation pursuant to the laws of the United States of America which places the duty upon and requires the defendants to preserve intact such evidence, but, to the contrary, the preservation of such evidence intact is left wholly to the discretion, whim, fancy and caprice of the employees and agents of the defendants. Plaintiff avers, upon information and belief, that it or its attorneys have been advised by a representative of the FAA that there is in existence a regulation which requires it to keep said tapes for a period of fifteen (15) days from the date of their recording, after which they may be destroyed, and it is the practice of said agency so to do. Plaintiff, however, is not advised of any law of the United States of America, or regulation made pursuant thereto, which requires the preservation of said tape for any period of time.

9. Plaintiff avers and charges that if said tapes are permitted by the person or persons having the custody and control thereof to be tampered with in any way, the most vital and essential evidence to the filing, prosecution and presentation of plaintiff's claim may and probably will be destroyed unless the same be prevented and that said vital evidence be preserved under appropriate orders of this Court. Plaintiff avers and charges further that the employees and agents of the FBI and FAA have and

may pursue a selfish interest in suppressing, concealing and/or tampering with the original status and existence of said tapes in such manner that the same may destroy or defeat plaintiff's ability to present to this Honorable Court relevant material and vital evidence in the prosecution of its claim for damages unless restrained by this Court as hereinafter prayed. Plaintiff avers further that the issuance of the writ of injunction hereinafter prayed is necessary or appropriate in aid of the jurisdiction of this Honorable Court to entertain, hear and determine plaintiff's claim of action and is agreeable to the usages and principles of law which include the invocation of the Court's power and writs in the premises to preserve essential evidence necessary to the prosecution of private claims against the sovereign.

10. Plaintiff avers further that time does not permit it to proceed under the provisions of Rule 27 of the Federal Rules of Civil Procedure, which provides for, under certain circumstances, the preservation of certain evidence, but which requires at least twenty (20) days' notice before the day of hearing by the Court of the taking of depositions thereunder in view of the facts and circumstances alleged in this complaint.


PREMISES CONSIDERED, PLAINTIFF PRAYS:

1. That prior to or upon the filing of this action, the Court issue a temporary restraining order, restraining the defendants, their agents, servants, employees and attorneys, from tampering with, altering, erasing, defacing, splicing or otherwise physically impairing the original condition of any and all recordings of any and all conversations or communications between ^{any persons and} occupants of the aircraft designated as "Commander 9058N" in flight and enroute from Nashville, Tennessee, ~~via Atlanta, Georgia~~, to Jacksonville, Florida, inclusive of the point of the departure and the point of destination on or around October 4, 1971, or within any twenty-four (24) hours preceding or succeeding said date, or from attempting to do so; and

further from permitting any person or persons to have the control and possession thereof or access thereto, other than in the presence of a custodian designated and authorized by the head of the defendant departments for the purpose of being responsible for the preservation of said recordings in their original form and condition.

2. That upon notice and hearing, a preliminary injunction issue by orders of this Court, restraining the defendants as prayed in the first prayer hereof and further ordering and directing the defendants, their agents, servants, employees and attorneys, to forthwith deposit any and all such recordings described in the first prayer hereof with the Clerk of this Court for safekeeping, with access thereto to be permitted only upon express orders of this Court.

3. For general relief.


Gilbert S. Merritt


Thomas Wardlaw Steele

Attorneys for Plaintiff

Of Counsel:
Gullett, Steele, Sanford, Robinson & Merritt
23rd Floor, Life & Casualty Tower
Nashville, Tennessee 37219.

VERIFICATION OF COMPLAINT

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

M. P. Brothers, Jr., being duly sworn, deposes and says that he is the President of Big Brother Aircraft, Inc., plaintiff in this cause; that the facts alleged and stated in said complaint are true to the best of his knowledge, information and belief; and that he is authorized to execute this verification on behalf of the corporation of which he is the President.

M. P. Brothers, Jr.

Subscribed and sworn to
before me this 5th day
of October, 1971.

Notary Public

My commission expires: _____

VERIFICATION OF COMPLAINT

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

M. P. Brothers, Jr., being duly sworn, deposes and says that he is the President of Big Brother Aircraft, Inc., plaintiff in this cause; that the facts alleged and stated in said complaint are true to the best of his knowledge, information and belief; and that he is authorized to execute this verification on behalf of the corporation of which he is the President.

M. P. Brothers, Jr.
M. P. Brothers, Jr.

Subscribed and sworn to
before me this 5th day
of October, 1971.

Peeta J. Jackson
Notary Public

My commission expires: 1/3/74

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

FILED

OCT 6 - 1971

BIG BROTHER AIRCRAFT, INC.,

Plaintiff

STANFORD LEWIS, Clerk

v.

JOHN A VOLPE, Secretary of
the Department of Transportation
of the United States of America;
THE FEDERAL AVIATION ADMINISTRA-
TION, an agency of the Department
of Transportation of the United
States of America, and its
Administrator, JOHN SCHAFER;
and J. EDGAR HOOVER, Director of
the Federal Bureau of Investigation,
an agency of the Department of
Justice of the United States of
America,

Defendants

CIVIL ACTION NO. 6322

AFFIDAVIT

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

I, Gilbert S. Merritt, attorney for plaintiff, Big Brother Aircraft, Inc., make oath that I communicated the substance of the attached complaint and application for temporary restraining order to the Honorable Charles H. Anderson, United States District Attorney for Middle Tennessee, by telephone at 7:45 P.M., October 5, 1971, and he advised that he would not need to be present when the complaint and application for temporary restraining order are presented to the Court and stated that he had no objection to their presentation to the Court ex parte by attorneys for plaintiff. In view of the urgent need for action to preserve the evidence described in the attached complaint, the efforts to give notice described herein, together with the lack of objection by the United States Attorney to ex parte presentation, satisfies Rule 65(b)(2), Federal Rules of Civil Procedure, and no further notice is required.

Gilbert S. Merritt
Gilbert S. Merritt

Subscribed and sworn, to
before me this 6th day
of October, 1971.

S/Elmer J. Jackson
Notary Public

My commission expires: 1/20/74

ATTEST: A TRUE COPY

Brandon Lewis, Clerk
U. S. District Court
Middle District of Tennessee
By Brandon Lewis D.C.

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

RECEIVED FOR ENTRY
1:05 P.M.

OCT 6 - 1971

BIG BROTHER AIRCRAFT, INC.,

Plaintiff

v.

JOHN A VOLPE, Secretary of
the Department of Transportation
of the United States of America;
THE FEDERAL AVIATION ADMINISTRA-
TION, an agency of the Department
of Transportation of the United
States of America, and its
Administrator, JOHN SCHAFER; and
J. EDGAR HOOVER, Director of the
Federal Bureau of Investigation,
an agency of the Department of
Justice of the United States of
America,

Defendants

BRANDON LEWIS, Clerk

CIVIL ACTION NO. 6222

TEMPORARY RESTRAINING ORDER

Application having been made to Honorable Frank Gray, Jr.,
Judge, for the issuance of a temporary restraining order as prayed
in the complaint filed in this cause and upon good cause shown,
it is the finding and opinion of the Court that such temporary
restraining order should issue; and it is accordingly

ORDERED, ADJUDGED AND DECREED by the Court that the defend-
ants, and each of them, their agents, servants, employees, attorneys
and any and all persons acting in concert with them, be and they
are hereby temporarily restrained from tampering with, altering,
erasing, defacing splicing or otherwise physically impairing the
original condition of any and all recordings of any and all conver-
sations or communications between any persons and occupants of the
aircraft designated as "Commander 9058N" in flight and enroute from
Nashville, Tennessee, via Atlanta, Georgia, to Jacksonville, Florida,
inclusive of the point of the departure and the point of destination,
on or around October 4, 1971, or within any twenty-four (24) hours
preceding or succeeding said date, or from attempting to do so; and

further from permitting any person or persons to have the control and possession thereof or access thereto, other than in the presence of a custodian designated and authorized by the head of the defendant departments for the purpose of being responsible for the preservation of said recordings in their original form and condition.

This temporary restraining order shall remain in full force and effect until 11 o'clock A.M., October 8, 1971, unless within the time so fixed this order for good cause shown is extended for a like period, at which time the Court will hear the application and motion of the plaintiff for the issuance of the preliminary injunction prayed in the complaint, at which time the defendants shall appear and show cause, if any, why the preliminary injunction prayed in the complaint should not issue.

The Court further finds that the plaintiff will suffer irreparable injury unless this temporary restraining order is issued in that there is no assurance that the tapes of said communications and conversations, if any, will be adequately and exactly preserved as evidence by the defendant, their agents, servants and employees, unless this temporary restraining order is issued; and it appearing to the Court that the recordings of said communications or conversations are essential to the investigation and presentation of plaintiff's prospective claim alleged in the complaint, and without a preservation of the same, an injustice may result; and it further appearing to the Court that due to doubt about the custody and control of said recordings and the present whereabouts of the same, all of the defendants herein should be restrained as provided herein and that all possible notice of the application for this temporary restraining order has been given by attorneys for the plaintiff to the United States Attorney at Nashville, and that the provisions of the Federal Rules of Civil Procedure for the issuance of a temporary restraining order without notice have been adequately complied with, it is so ORDERED by the Court.

A condition of the issuance of this temporary restraining order is the filing and posting of a good and adequate surety bond by the plaintiff in the penal sum of \$250.00, conditioned for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

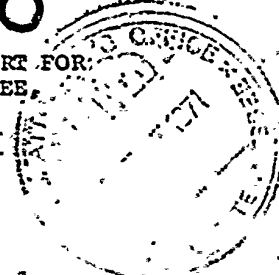
ALL OF WHICH IS SO ORDERED BY THE COURT at 12:16 o'clock 12:M., this October 6, 1971.

Charles B. Gray, Jr.
JUDGE

ATTEST: A TRUE COPY

Brandon Lewis, Clerk
U. S. District Court
Middle District of Tennessee
Birmingham, Alabama, U.S.C.

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION



BIG BROTHER AIRCRAFT, INC.,

Plaintiff

v.

CIVIL ACTION NO. 6322

JOHN A. VOLPE, Secretary,
etc., et al.,

Defendants

MOTION

The plaintiff moves the Court to amend the complaint filed in this action in the following particulars:

1. By adding as a party plaintiff, Mrs. Brent Downs, who is the widow of the deceased pilot killed in the incident described in the complaint.

2. By adding to the first paragraph of the complaint the following sentence: "This complaint is also filed as a petition for the perpetuation of evidence under the provisions of Rule 27 and Rule 34 of the Federal Rules of Civil Procedure."

3. By interlining after the word "plaintiff" in the first line of paragraph 6 of the complaint, the following: "Big Brother Aircraft, Inc."; and by adding to paragraph 6 of the complaint the following sentences: "The plaintiff, Mrs. Brent Downs, has and intends to pursue and prosecute an action for the wrongful death of her deceased husband, Brent Downs, against the United States of America under the Federal Tort Claim Act, 28 U.S.C. 2671 et seq. This Court has and will have jurisdiction and venue of said action pursuant to 28 U.S.C. 1391(3)."

4. By adding to the prayers for relief of said complaint the following paragraph to be numbered paragraph 3, and by renumbering paragraph 3 as paragraph 4 thereof:

"3. In the alternative, this complaint be treated as a petition for the perpetuation of evidence under the provisions of Rules 27 and 34 of the Federal Rules of Civil Procedure and thereunder for the production, examination, listening, recording, copying and/or transcribing of all of the original recordings of the conversations described in the complaint and the prayers thereto; and, further, that the Court issue a preliminary injunction in the form and substance of the temporary restraining order, issued in this cause, continuing the same in full force and effect until the production of such recordings and examination thereof by the plaintiffs or their attorneys, and make full and appropriate orders in the premises."

5. By adding to the names of the attorneys of record in this cause the name of:

Jack A. Butler, Esq.
1406 Nashville Bank & Trust Building
Nashville, Tennessee

Jack A. Butler
Jack A. Butler

Gilbert S. Merritt
Gilbert S. Merritt

Thomas Wardlaw Steele
Thomas Wardlaw Steele
Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been personally delivered to Honorable Charles H. Anderson, United States Attorney, at the United States Courthouse, Eighth and Broad Streets, Nashville, Tennessee, on the afternoon of October 7, 1971.

Howard W. Bice

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

BIG BROTHER AIRCRAFT, INC.

V.

CIVIL NO. 6322

JOHN A. VOLPE, et al.

O R D E R

This cause came on to be heard October 8, 1971, on motion to amend the complaint and on motion on behalf of the plaintiffs that a preliminary injunction be issued in accordance with the prayer of the complaint, and upon argument of counsel.

The United States Attorney stated to the Court that the Federal Aviation Administration had in effect prior to the incident in question, October 4, 1971, standing instructions to FAA installations to preserve recording tapes of radio communications between FAA control towers and aircraft subjected to air piracy; that preservation of such tapes physically intact in their original condition and under FAA exclusive supervision, possession and control is the custom and practice of the FAA.

Further, the United States Attorney stated he had been assured by the Air Traffic Service (Washington, D. C.) and the Regional Attorney (Atlanta, Georgia) of the FAA that in response to the order of this Court special instructions were issued to assure compliance with these instructions to the following FAA installations and department heads:

John M. Omohundro, Chief
Airport Traffic Control Tower
Nashville Metropolitan Airport
Nashville, Tennessee 37217

William W. Parker, Chief
Air Route Traffic Control Center
3229 Democrat Road
P. O. Box 18097
Memphis, Tennessee 38118

John V. Veal, Chief
Air Route Traffic Control Center
299 Woolsey Road
P. O. Box 268
Hampton, Georgia 30228

James E. Pound, Chief
Air Route Traffic Control Center
811 E. Second Street
P. O. Box 98
Hilliard, Florida 32046

Carl R. Leavitt, Jr., Chief
Airport Traffic Control Center
Jacksonville International Airport
P. O. Box 18346 - AMF Branch
Jacksonville, Florida 32229

The United States Attorney stated that the Air Traffic Service of the FAA had told him that the above facilities apparently were the only ones in radio contact with the subject aircraft.

Furthermore, the United States Attorney stated that he had been talking with the offices of U. S. Attorney in Jacksonville, Florida, and the Federal Bureau of Investigation at Nashville, Tennessee, and it was reported to him that at no time did agents of the FBI take control over or possession of the original recording tapes, and the few transcripts or copies of the tapes in possession of the FBI were made by and under the supervision of FAA personnel.

Whereupon the plaintiff moved the Court to grant its motion to amend its complaint, and by agreement of the parties the complaint heretofore filed be and hereby is amended.

It appears the parties have agreed upon the relief to be provided by the Court, and it is therefore ORDERED that the plaintiffs and their attorneys be allowed access to hear, copy and transcribe the original recording tapes under the supervision of FAA personnel at the installations indicated above or at some central location if the defendants collect the transcriptions.

and it is therefore ordered
The parties further have agreed ~~that the defendants,~~
by the court including the individual managers or chiefs of the above installations or their successors, shall preserve the subject tapes in their original form, subject to further orders of the Court.

Further, it is ORDERED that the relief requested by the plaintiffs is otherwise denied without prejudice to their rights to seek equitable relief to perpetuate evidence or rights of discovery under the Federal Rules of Civil Procedure; the defendants hereby expressly waiving notice as provided by said Rules.

ENTER:

UNITED STATES DISTRICT JUDGE

Approved for Entry:

CHARLES H. ANDERSON
United States Attorney

GILBERT S. MERRITT, JR.

THOMAS WARDLAW STEELE

JACK A. BUTLER
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED

OCT 12 1971

BRANDON LEWIS, Clerk

BIG BROTHERS AIRCRAFT, INC.)
V.) NO. 6322
JOHN A. VOLPE, ET AL)

M O T I O N

Bobby Wayne Wallace moves the Court for leave to intervene herein and for an amendment to the Order filed in this cause on the 8th day of October, 1971, and as grounds therefor states:

(1) That he has been charged with a federal offense arising out of the events of October 4, 1971, which events also formed the basis of this action;

(2) That access to the tapes involved in this cause are vital to insure his right to a fair and impartial trial on his federal charge, such right being at least as important as the rights of the plaintiffs asserted in this action;

(3) That the interest of justice requires that this motion to intervene be allowed and that after such intervention the above described order issued in this cause be amended to include a paragraph in substance as follows:

It is ORDERED, further, that counsel for intervenor, Bobby Wayne Wallace, be allowed access to hear, copy and transcribe the original recording tapes under the supervision of FAA personnel at the installations indicated above or at some central location, if the defendants collect the transcription. A copy of this order, as amended, shall be served upon the United States Attorney for the Northern District of Florida.

WHEREFORE, Bobby Wayne Wallace respectfully requests that the Court grant his motion to intervene in this cause and after such intervention amend the above described order in substance as requested above.

Respectfully submitted,

Edward Booth, James F. Neal,
Larry D. Woods and Charles W.
Bone, Counsel for Bobby Wayne
Wallace

By James F. Neal

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion has been served on the Honorable Charles H. Anderson, United States Attorney for the Middle District of Tennessee, Honorable Gilbert S. Merritt, Jr., Honorable Thomas W. Steele and Honorable Jack Butler, attorneys for plaintiffs, this 12th day of October, 1971.

James F. Neal
James F. Neal

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

RECEIVED FOR ENTRY

OCT 12 1971

BRANDON LEWIS, Clerk

BIG BROTHER AIRCRAFT, INC.]

VS.]

CIVIL NO. 6322

JOHN A. VOLPE, ET AL.]

ORDER

This involves a motion to intervene in the instant proceeding, filed by Bobby Wayne Wallace, who asserts "[t]hat he has been charged with a federal offense arising out of the events of October 4, 1971, which events also formed the basis of this action; [and] [t]hat access to the tapes involved in this cause are [sic] vital to insure his right to a fair and impartial trial on his federal charge. . . ." Accordingly, he has filed the instant motion, seeking to be allowed to intervene as a party plaintiff in this proceeding and ultimately to be given access to the aforesaid tapes as have the plaintiffs herein. This court is of the opinion that his motion to intervene is not well taken.

This action was brought under the provisions of 28 U.S.C. § 1651(a), the language of which is as follows:

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

By its clear language, this provision does not contemplate the

situation of the instant movant. As this court judicially notices, movant is charged with no offense within this judicial district, and he is not otherwise prospectively involved in any proceedings in this court. It is thus manifest that any relief issued in this case would not, insofar as this movant is concerned, be "in aid" of this court's jurisdiction, as provided in the statute.

Reduced to its simplest terms, this motion to intervene turns upon the answer to the following question: Can one accused of a federal offense in another jurisdiction intervene in a civil proceeding in which he has no interest to compel the production of items in the Government's control which may have a bearing upon his case? Clearly, movant could not succeed in compelling the production of the tapes if he initiated a civil action of his own in the district in which he is accused, and equally clearly he cannot compel their production as intervenor in a civil action in this jurisdiction.

It follows that movant's motion to intervene herein must be DENIED, and it is so ORDERED.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE
Nashville Division

MRS. BRENT QUINTON DOWNS and ANDREW)
ARTHUR DOWNS, 622 Paces Ferry Road,)
Nashville, Tennessee,)

SUSAN GERMAINE GIFFE and MAJOR AND)
MRS. JOSEPH S. LAKICH, 4122 Moss)
Rose Drive, Nashville, Tennessee,)

BIG BROTHER AIRCRAFT, INC., and)
M. P. BROTHERS, JR., Nashville)
Metropolitan Airport, Nashville,)
Tennessee,)

Petitioners,)

v.)

UNITED STATES OF AMERICA,)

Respondent.)

CIVIL ACTION NO. _____

PETITION TO PERPETUATE EVIDENCE.

NOTICE OF APPLICATION FOR PUBLIC DISCLOSURE OF
INFORMATION AND TO SECURE AND PERPETUATE EVIDENCE

To: The Honorable John Mitchell
Attorney General of the United States

The Honorable Charles Hill Anderson
United States Attorney for the Middle
District of Tennessee

Please take notice that a transcript of tape recordings of radio communications between FAA and FBI agents and the pilot of the hijacked airplane are a part of the Administrative Claim attached as Exhibit A to the petition attached hereto but such transcript is being filed with the Court under seal and not as a part of the public record of the case. Counsel for petitioners and government counsel met in chambers with the Honorable Frank Gray, Jr., Chief Judge, on October 19, 1971, at which time government counsel objected to public disclosure of the transcript. The Court advised petitioners' counsel to file the transcript of such tapes under seal for in camera inspection and decision respecting disclosure thereof and advised government counsel to file expeditiously the reasons for government's objection to disclosure.

Please take notice that the petitioners named above will

apply to the Honorable Frank Gray, Jr., for an order making said tapes a part of the public record of the case on Friday, October 22, 1971, at nine o'clock in the morning or as soon thereafter as the Court sets the matter for hearing.

Please take further notice that the petitioners named above will apply to the Honorable Frank Gray, Jr., Chief Judge of the United States District Court for the Middle District of Tennessee at the United States Courthouse at Nashville, Tennessee, on the 10th day of November, 1971, at nine o'clock in the morning or as soon thereafter as the Court shall set the matter for hearing, for the order under Rule 27 described in the petition, a copy of which is annexed hereto.

Jack A. Butler
Jack A. Butler

Thomas Wardlaw Steele
Thomas Wardlaw Steele

Gilbert S. Merritt
Gilbert S. Merritt

Of Counsel:
Gullett, Steele, Sanford, Robinson & Merritt
23rd Floor, Life & Casualty Tower
Nashville, Tennessee 37219

Certificate of Service 10-20-71.

G. Merritt

IN THE UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE

Nashville Division

MRS. BRENT QUINTON DOWNS and
ANDREW ARTHUR DOWNS, 622 Paces
Ferry Road, Nashville, Tennessee,

SUSAN GERMAINE GIFFE and MAJOR
AND MRS. JOSEPH S. LAKICH, 4122
Moss Rose Drive, Nashville, Tennessee,

BIG BROTHERS AIRCRAFT, INC., and
M. P. BROTHERS, JR., Nashville
Metropolitan Airport, Nashville,
Tennessee,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

CIVIL ACTION NO. _____
PETITION TO PERPETUATE
EVIDENCE

P E T I T I O N

To: The Honorable Frank Gray, Jr.
Chief Judge, United States District Court
for the Middle District of Tennessee

1. This petition against the United States is filed pursuant to Rules 27 and 34 of the Federal Rules of Civil Procedure governing the perpetuation of evidence before an action is filed. Rule 34 providing for the production of documents is incorporated by reference in Rule 27(3) providing for securing and perpetuating evidence prior to filing suit. The United States District Court for the Middle District of Tennessee has jurisdiction and venue of the subject matter of this action under 28 U.S.C. §§ 1346(b) and 1391(e).

2. Petitioners expect to be parties to separate tort actions cognizable in this court for wrongful death, injuries and damage under the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq., but are presently unable to bring such actions because of the provisions of 28 U.S.C. § 2675(a) requiring the filing of Administrative Claims six months prior to instituting any legal action in federal district court. Section 2675(a) of the Tort Claims Act provides:

An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section.

This statutory delay means that relevant evidence may not be secured and perpetuated by normal procedures established for securing such evidence after suit is filed and makes applicable Rules 27 and 34 adopted to provide specifically for securing evidence under such circumstances.

3. The subject matter of the expected actions and petitioners' interest therein are set out fully in the Administrative Claim attached hereto as Exhibit A incorporated herein by reference.

4. Petitioners desire to secure, establish and perpetuate certain facts, testimony, documents, statements and reports as more fully described in the prayer for relief set out below. Petitioners cannot otherwise obtain and perpetuate these facts because the FBI and the FAA, upon request, have refused to provide such information voluntarily and have refused to permit their employees and agents to be interviewed by petitioners' attorneys or to discuss or provide them with information relating to the subject matter of the expected lawsuit other than the tape recording of conversations between government agents and the pilot of the hijacked airplane, recordings obtained by petitioners only as a result of orders of this Court on October 8, 1971, in Civil Action 6322.

WHEREFORE, petitioners ask the Court for an order as follows:

1. Authorizing the petitioners' attorneys to take the depositions of the following government agents and employees upon oral examination:

- (i) Bernard Sloan, an employee of the Federal Aviation Administration who operated the Jacksonville tower radio communication with the hijacked airplane.
- (ii) Carrol Bright, an employee of the Federal Aviation Administration, who was present in the Jacksonville tower at the time of the hijack and supervised the activities of the Federal Aviation Administration.
- (iii) Frank Burns, an agent of the Federal Bureau of Investigation, who operated the FBI's radio communications with the hijacked plane at the Jacksonville tower and also operated the FBI's radio communications with FBI agents on the ground near the aircraft after it landed.
- (iv) James J. O'Connor, the FBI field agent present at the Jacksonville airport when the hijacked plane landed and in charge of the group of FBI agents who stopped, refused to refuel and fired upon the plane.
- (v) George McBride, George Murphy, Dalton Mayo and Jack Faalfield, the group of FBI agents present at the Jacksonville airport in the immediate vicinity of the hijacked airplane at the time the FBI refused to refuel and began firing upon the airplane.

- 2. Requiring the Government to permit petitioners' attorneys to inspect and copy or photograph photographs made and tangible objects secured in connection with its investigation of the hijacking.

3. Requiring the Government to permit petitioners' attorneys to inspect and copy results or reports of physical or mental examinations and of scientific tests, measurements, calculations or experiments made in connection with the Government's investigation of the hijacking.
4. Requiring the United States to permit petitioners' attorneys to inspect and copy any written or recorded statements, documents or letters of the petitioners, members of their families or their employees made or obtained by the government in connection with its investigation of the hijacking.
5. Requiring the Government to permit petitioners' attorneys to inspect and copy all written or recorded statements made by agents or employees of the government, including internal government memoranda, documents and reports, describing, summarizing or commenting upon the activities and response of any government agent or employee in connection with the hijacking, including but not limited to facts, reasons, and explanations relating to the refusal by agents of the government to refuel the hijacked airplane, the refusal by agents of the government to follow the pilot's other requests regarding the airplane and its occupants and the firing upon the airplane by agents of the government.
6. Requiring the Government to permit petitioners' attorneys to inspect and copy all written or recorded statements showing information, facts and knowledge relating to the hijacked plane and its occupants in the possession of agents of the government immediately prior to the time FBI agents fired upon the airplane.

7. Requiring the Government to permit petitioners' attorneys to inspect and copy all written or recorded statements, manuals and documents showing the instructions, guidelines and directions given to government agents by higher authorities in the handling of this hijacking and any such general statements, instructions, guidelines and directions which agents of the government should have followed or considered in connection with their handling of this hijacking.
8. Requiring the Government to permit petitioners attorneys to inspect and copy any daily reports or confidential reports describing or alluding to the aforesaid hijacking made by agents or employees of the government who participated in the effort by the government to forestall the hijacked airplane from leaving the airport in Jacksonville, Florida.

Jack A. Butler
Jack A. Butler

Thomas Wardlaw Steele
Thomas Wardlaw Steele

Gilbert S. Merritt
Gilbert S. Merritt

Of Counsel:
Gullett, Steele, Sanford, Robinson & Merritt
23rd Floor, Life & Casualty Tower
Nashville, Tennessee 37219

VERIFICATION OF PETITION

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Mrs. Brent Quinton Downs, being duly sworn, deposes and says that she is a petitioner in this cause and that the facts alleged and stated in said petition are true to the best of her knowledge, information and belief.

Mrs. Brent Quinton Downs
Mrs. Brent Quinton Downs

Subscribed and sworn to before
me this 20th day of October, 1971.

Barbara Parker
Notary Public

My commission expires: 2-4-75

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Major and Mrs. Joseph S. Lakich, being duly sworn, depose and say that they are petitioners in this cause and that the facts alleged and stated in said petition are true to the best of their knowledge, information and belief.

Joseph S. Lakich
Major Joseph S. Lakich

Mrs. Joseph S. Lakich
Mrs. Joseph S. Lakich

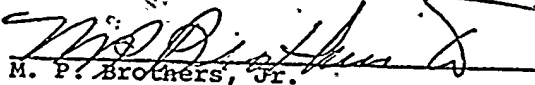
Subscribed and sworn to before me
this 20th day of October, 1971.

Glean Jackson
Notary Public

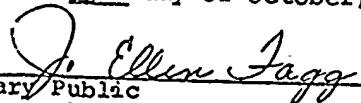
My commission expires: 1/20/79

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

M. P. Brothers, Jr., being duly sworn, deposes and says that he is the President of Big Brother Aircraft, Inc., petitioner in this cause; that the facts alleged and stated in said petition are true to the best of his knowledge, information and belief; and that he is authorized to execute this verification on behalf of the corporation of which he is the President.


M. P. Brothers, Jr.

Subscribed and sworn to before
me this 20th day of October, 1971.


Notary Public

My commission expires: 1-22-72

IN THE UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE
Nashville Division

FILED

OCT 21 1971

BIG BROTHERS AIRCRAFT, INC.,
et al
WLAC-TV, INC., Applicant
for intervention

VS.

JOHN VOLPE, Secretary of
Transportation, Federal
Aviation Administration
JOHN SHAFFER, Administrator,
J. EDGAR HOOVER, Director of
the Federal Bureau of Investi-
gation

BRANDON LEWIS, Clerk
BY *[Signature]* D.C.

CIVIL ACTION NO. 6322
MOTION TO INTERVENE
AS A PLAINTIFF

MOTION TO INTERVENE

1. The Intervenor, WLAC-TV, Inc., is a Tennessee corporation, doing business in Nashville, Davidson County, Tennessee, and is owner and operator of a television station that telecasts news and other programs in the Middle Tennessee area.

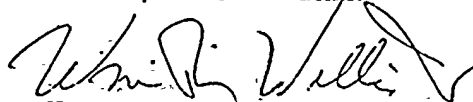
2. WLAC-TV moves for leave to intervene in this action under Rule 24(a) (2) of the Federal Rules on Civil Procedure in order that it may file the petition, which is attached hereto.

3. As grounds for intervention, WLAC-TV asserts that it has an interest in the property which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the Intervenor's ability to protect that interest. Intervenor's interest is not adequately represented by existing parties.

4. The original plaintiffs have applied for an order making certain tape recordings a part of the public record of this case. Intervenor is proceeding under the Public Information Act, Title 5, Section 552 of the United States Code, to secure these tape recordings, or copies thereof, for its own use. If the Court orders that the tape recordings be made a part of the

record of this case, the tape recordings will no longer be in the hands of the public officials, defendants herein, from whom the recordings would otherwise be sought. Since the same tape recordings are being sought both by the original plaintiffs and by the Intervenor, and since the defendants are the same, and since the action of this Court on original plaintiffs' motion shall determine the whereabouts of the tapes Intervenor seeks, Intervenor's rights are therefore directly affected by the action of this Court and can be protected only by an order allowing intervention.

WILLIS, KNIGHT & BARR



Attorney for WLAC-TV,
Applicant for Intervention

I CERTIFY THAT A COPY THE ABOVE PLEADING
HAS BEEN FURNISHED TO COUNSEL FOR ALL IN-
TERESTED PARTIES BY DELIVERY OR BY PLACING
SAME IN THE UNITED STATES MAIL, POSTAGE
PREPAID. THIS 21 DAY OF Oct, 1971

WILLIS KNIGHT & BARR
By 

IN THE UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE

Nashville Division

BIG BROTHERS AIRCRAFT, INC.,
et al
WLAC-TV, INC., Intervenor

VS.

CIVIL ACTION NO. 6322

JOHN VOLPE, Secretary of
Transportation, Federal
Aviation Administration,
JOHN SHAEFER, Administrator,
J. EDGAR HOOVER, Director of
the Federal Bureau of Investi-
gation

INTERVENOR'S PETITION

1. The Intervenor, WLAC-TV, Inc., is a Tennessee corporation, doing business in Nashville, Davidson County, Tennessee, and is owner and operator of a television station that telecasts news and other programs in the Middle Tennessee area.

2. Defendant, John Volpe, is the Chief Executive Officer of the Department of Transportation, which has direct authority over the Federal Aviation Administration. Defendant, Federal Aviation Administration, and John Shaffer, Administrator, operate the air traffic control facility at the Jacksonville, Florida, airport where certain tape recordings were made, as specified herein, and have the custody and control of such tape recordings. Defendant, J. Edgar Hoover, is the Chief Executive Officer of the Federal Bureau of Investigation, which exercised authority over the occurrence during which the tape recordings were made, and which may have custody and control of the tape recordings.

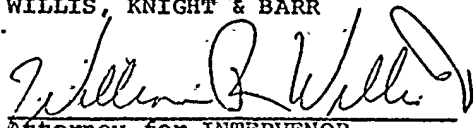
3. The Intervenor, through its employees, has on several occasions requested that defendants make available to WLAC-TV certain tape recordings or permission to make copies thereof, that are in the possession and control of defendants. These tape recordings were made by defendants on or about October 4, 1971, at the airport in Jacksonville, Florida, and Jacksonville Air Control Center, Hilliard, Florida. These tapes record the radio

communications between the air traffic control tower in Jacksonville and a Hawk Commander 9058N airplane owned by Big Brothers Aircraft, Inc., which was being hijacked and in which three people were killed. The defendants have consistently refused to make available these tape recordings to WLAC-TV, or permit copies thereof to be made therefrom.

4. WLAC-TV submits that these tape recordings are of substantial and legitimate public interest, and are public records available to it under Title 5, Section 552 of the United States Code, which requires that such information be made available to any person on request.

WHEREFORE, Intervenor prays that a hearing be held at the earliest possible date, as provided in Title 5, Section 552 of the United States Code, and that defendants be enjoined from improperly withholding from Intervenor the requested tape recordings, or from allowing Intervenor to make copies thereof.

WILLIS, KNIGHT & BARR


Attorney for INTERVENOR

700 Union Street
Nashville, Tennessee 37219

RECEIVED

OCT 25 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

U. S. ATTORNEY'S OFFICE
NASHVILLE, TENNESSEE

NASHVILLE DIVISION

BIG BROTHERS AIRCRAFT, INC.,
et al
WLAC-TV, INC.
WSM, INCORPORATED,

Intervenors

vs.

JOHN VOLPE, Secretary of
Transportation, Federal
Aviation Administration
JOHN SHAFFER, Administrator,
J. EDGAR HOOVER, Director of
the Federal Bureau of
Investigation

CIVIL ACTION NO. 6322

MOTION TO INTERVENE
AS A PLAINTIFF

NOTICE OF MOTION

TO: Jack A. Butler, Esquire
Thomas Wardlaw Steele, Esquire
Gilbert S. Merritt, Esquire
Attorneys for Plaintiffs

William R. Willis, Jr., Esquire
Attorney for Intervenor
WLAC-TV, INC.

The Honorable John Mitchell
Attorney General of the United States

The Honorable Charles Hill Anderson
United States Attorney for the
Middle District of Tennessee
Attorneys for Defendants

Please take notice, that the undersigned will bring the
above motion on for a hearing before this Court at the United
States Courthouse, Nashville, Tennessee, on the 26th day of
October, 1971, at 3:30 P.M. of that day or as soon thereafter
as counsel can be heard.

Walter M. Robinson, Jr.

Walter M. Robinson, Jr.
Attorney for Intervenor
WSM, INCORPORATED
National Life Center
Nashville, Tennessee 37203

RECEIVED

OC 25 1971

U. S. A. ORNEY'S OFFICE
NAT E, TENNESSEE

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE

Nashville Division

BIG BROTHERS AIRCRAFT, INC.,
et al
WLAC-TV, INC., Applicant
for intervention
WSM, INC., Applicant for
intervention

VS.

JOHN VOLPE, Secretary of
Transportation, Federal
Aviation Administration
JOHN SHAFFER, Administrator,
J. EDGAR HOOVER, Director of
the Federal Bureau of Investi-
gation

CIVIL ACTION NO. 6322

MOTION TO INTERVENE
AS A PLAINTIFF

MOTION TO INTERVENE

1. WSM, INC., a Tennessee corporation, with its principal place of business located in Nashville, Tennessee, moves for leave to intervene as Plaintiff in this action in order to file its petition which is attached hereto.
2. WSM, INC. is owner and operator of a television station and two radio stations that broadcast news and other matters of public interest in the Middle Tennessee area.
3. WSM, INC. avers that it has an interest in certain property which is the subject of these proceedings and that Intervenor's interest may only be adequately protected by its intervention therein.
4. The original plaintiffs have requested an order which would make certain tape recordings a part of the public record of this case. Intervenor desires to obtain these recordings (or reproductions thereof) for its use in properly informing the public; that to the extent that the original plaintiff or any intervenor

or other party should obtain an order which would make said tapes unavailable to the Intervenor, WSM, INC., its rights are affected and may be protected only by an order.

Walter M. Robinson, Jr.

Walter M. Robinson, Jr.
Attorney For WSM, INC.
Applicant for Intervention

I certify that a copy of the above pleading has been furnished to counsel for all interested parties by delivery or by placing same in the United States mail, postage prepaid, this 22 day of October, 1971.

Walter M. Robinson, Jr.
Walter M. Robinson, Jr.

RECEIVED

OCT 25 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

U. S. A. ORNEY'S OFFICE
NASHVILLE, TENNESSEE

NASHVILLE DIVISION

BIG BROTHERS AIRCRAFT, INC.,)
et al)
WLAC-TV, INC., Intervenor)
WSM, INCORPORATED, Intervenor)

vs.)

CIVIL ACTION NO. 6322

JOHN VOLPE, Secretary of)
Transportation, Federal)
Aviation Administration,)
JOHN SHAFFER, Administrator,)
J. EDGAR HOOVER, Director of)
the Federal Bureau of)
Investigation)

INTERVENOR'S PETITION

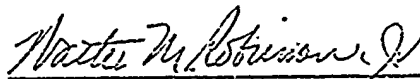
1. The Intervenor, WSM, Incorporated, is a Tennessee corporation, doing business in Nashville, Davidson County, Tennessee, and is owner and operator of a television station and two radio stations that broadcast news and other programs in the Middle Tennessee area.

2. Defendant, John Volpe, is the Chief Executive Officer of the Department of Transportation, which has direct authority over the Federal Aviation Administration. Defendant, Federal Aviation Administration, and John Shaffer, Administrator, operate the air traffic control facility at the Jacksonville, Florida, airport where certain tape recordings were made, as specified herein, and have the custody and control of such tape recordings. Defendant, J. Edgar Hoover, is the Chief Executive Officer of the Federal Bureau of Investigation, which exercised authority over the occurrence during which the tape recordings were made, and which may have custody and control of the tape recordings.

3. On or about October 4, 1971, an airplane owned by Big Brothers Aircraft, Inc., was hijacked and in which three people were killed. On or about said date certain tape recordings were made by Defendants at the airport in Jacksonville, Florida, and Jacksonville Air Control Center, Hilliard, Florida. These tapes record certain communications between the air traffic control tower in Jacksonville and said airplane. Intervenor's employees have on numerous occasions requested Defendants to make available to WSM, Incorporated, such recordings or be allowed to make copies thereof. However, Defendants have in every instance refused to make such recordings available to WSM, Incorporated, in order that copies be made therefrom.

4. Intervenor, WSM, Incorporated, believes these tape recordings are of substantial and legitimate public interest and are public records available to it under Title 5, Section 552 of the United States Code which requires such information to be made available to any person upon request.

WHEREFORE, Intervenor prays that an early hearing be held as provided in Title 5, Section 552 of the United States Code, and that Defendants be required to turn over said recordings to Intervenor, WSM, Incorporated, or to allow said Intervenor to make copies of same.


Walter M. Robinson, Jr.
Attorney for Intervenor
WSM, Incorporated

I certify that a copy of
the above pleading has been
furnished to counsel for all
interested parties by delivery
or by placing same in the United
States mail, postage prepaid,
this 22nd day of October, 1971.

Walter M. Robinson, Jr.

Walter M. Robinson, Jr.

IN THE UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE

Nashville Division

MRS. BRENT QUINTON DOWNS and
ANDREW ARTHUR DOWNS, 622 Paces
Ferry Road, Nashville, Tennessee,

SUSAN GERMAINE GIFFE and MAJOR
AND MRS. JOSEPH S. LAKICH, 4122
Moss Rose Drive, Nashville, Tennessee,

BIG BROTHERS AIRCRAFT, INC., and
M. P. BROTHERS, JR., Nashville
Metropolitan Airport, Nashville,
Tennessee,

Petitioners,

UNITED STATES OF AMERICA,

Respondent.

CIVIL ACTION NO. _____

PETITION TO PERPETUATE
EVIDENCE

RECEIVED

OCT 26 1971

U. S. ATTORNEY'S OFFICE
NASHVILLE, TENNESSEE

M O T I O N

Petitioners move the Court to amend the Petition to
Perpetuate Evidence heretofore filed in the following particulars:

1. By adding to the list of persons whose depositions
petitioners propose to take as set forth in paragraph four of
the petition the following additional names and descriptions.

(vi) James K. Jetton, an FAA employee who was the
radio controller handling the hijacked aircraft
at the Jacksonville Center in Hilliard, Florida.

(vii) Joe M. Hinson, an FAA supervisor who monitored
James K. Jetton's handling of the hijacked
aircraft at the Jacksonville Center.

(viii) Buddy C. Friedlin, an FAA supervisor at the
Jacksonville Center who purportedly made a
land line call to Jacksonville tower to
ascertain if the pilot's request for refueling,
etc., were to be complied with.

(ix) Roger Meyer, an FBI agent stationed in Nashville,
Tennessee, who talked to Major and Mrs. Joseph S.

which concerning the hijacking of the aircraft on the night it occurred, both prior to and subsequent to its arrival in Jacksonville, Florida, and who was informed by them of the dangerous propensities of one of the passengers thereon if thwarted in his plans for the hijacked aircraft.


(x) Any other federal employees who were present at the Jacksonville Tower at the time of the communication between it and the hijacked aircraft by radio communications or at the time of radio or telephone communications between FBI agents present in the Tower during the incident described in the petition.

2. By adding to the said petition an additional paragraph as follows:

9. Requiring the government to permit petitioners' attorneys to hear, copy and transcribe any and all recorded conversations, whether telephonic or radio conversations, between agents of the FBI concerning the handling of and the dispensing of information relative to the hijacked aircraft regardless of the point of origin and destination of said conversations, including but not limited to recordings of all FBI agents in Jacksonville, Florida, and its environs, regarding any and all conversation between FBI agents at the Jacksonville Tower and automobiles or other points of Jacksonville, Florida, and its environs; and any and all conversations between FBI agents in Jacksonville, Florida, and Nashville, Tennessee,

and other FBI agents or employees in
Washington, D. C.


Jack A. Butler


Thomas Wardlaw Steele

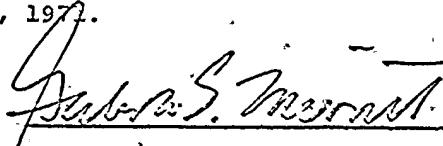

Gilbert S. Merritt

Of Counsel:

Gullett, Steele, Sanford, Robinson & Merritt
23rd Floor, Life & Casualty Tower
Nashville, Tennessee 37219

Certificate of Service

I hereby certify that I have mailed to the United States
Attorney, Counsel for the Respondent, a copy of the above Motion
on this 26th day of October, 1977.


Gilbert S. Merritt

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

BIG BROTHERS AIRCRAFT, INC.,)
et al)
WLAC-TV, INC., Intervenor)
WSM, INCORPORATED, Intervenor)
vs.)

CIVIL ACTION NO. 6322

JOHN VOLPE, Secretary of)
Transportation, Federal)
Aviation Administration,)
JOHN SHAFFER, Administrator,)
J. EDGAR HOOVER, Director of)
the Federal Bureau of)
Investigation)

MEMORANDUM OF WSM, INCORPORATED
IN SUPPORT OF MOTION TO INTERVENE

I. Rule 24(a) and Rule 24(b) are to be liberally construed,
in order to avoid a multiplicity of suits, and the motion to
intervene should be granted where possible. Brotherhood of
Locomotive Engineers vs. Chi., M., St. P., and P.R. Co., 34 F.
Supp. 594. Nuesse vs. Camp (C.A. D.C. 1967) 385 F. 2d 385.

II. Should the motion be granted, the original petition, with
intervening petitions, should be set for hearing at an early date.
Plaintiff WSM, Incorporated submits that Rule 12(a), Federal Rules
of Civil Procedure does not apply, in that the language of 5 U.S.C. 522
(a)(3) clearly contemplates action thereunder calling for extra-
ordinary process under expedited procedures. This has been recognized
in numerous cases, including Bristol-Myers vs. FTC (C.A.D.C. 1970),
424 F. 2d 935.

III. Plaintiff WSM mentions the merits of the intervening
petition only to respond briefly to certain points made in the
memorandum presented earlier today by defendant.

The requested record does not fall within the "investigative file" exemption to the Public Information Act, in that previous proceedings in this Court have revealed that it is a recording of a routine nature kept and maintained at many airports under FAA jurisdiction. That it may ultimately be used in some law enforcement proceeding does not bring it within the exemption. Bristol-Myers Co. vs. FTC., supra. Any administrative attempts to broaden the scope of the exemption would, of course, be invalid.

The burden of proof of the existence of the exemption, of course, is on the defendant. 5 USCA 522 (a)(3).

Respectfully submitted

Norman D. Trench
Attorney for Plaintiff
WSM, Incorporated

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MRS. BRENT QUINTON DOWNS,
et al.

V.

UNITED STATES OF AMERICA

CIVIL NO. _____

MEMORANDUM IN OPPOSITION
TO APPLICATION FOR PUBLIC DISCLOSURE
OF INFORMATION AND PETITION

A. The United States of America opposes the application of the petitioners to have their transcript of tapes, attached as an exhibit to their petition, made a part of the public record in the case for the following reasons:

1. The Government has not had an opportunity to compare the transcript submitted by the petitioners with the actual tapes. If any transcript is to be made a part of the public record, the Government insists that it be accurate and complete, especially in view of the publicity the transcript will certainly receive.

2. The Respondent, representing the prosecution in a related pending criminal case which could be transferred to this Court, as a matter of professional ethics must resist the application.

The American Bar Association's Standards on Fair Trial and Free Press reads:

It is the duty of the lawyer not to release or authorize the release of information...for dissemination by any means of public communication, in connection with pending or imminent criminal litigation with which he is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

The criminal defendant's local attorney specifically has not assented to the release of the transcripts to the press. Clearly, the prosecution should not.

3. The transcript filed as an exhibit to the petition has nothing to do with the petitioners' application for discovery. Petitioners, of course, already have been given access to the information contained in the transcript. Petitioners' only apparent purpose in seeking to have the transcript made a part of the public record is to circumvent the agreement between their attorneys and the attorneys for the United States to the effect that access to the information on the tapes would be limited to petitioners and their attorneys.

B. The United States opposes the Petition to Perpetuate Evidence as not authorized by FED. R. CIV. P. 27:

1. The purpose of Rule 27 was not for the purpose of discovery before action is commenced, and to allow it to be used for this purpose would be an "abuse of the rule." 8 WRIGHT, FED. PRAC. & PROCEDURE: Civil §2071, pp. 332-333.

2. The petition is to be filed in the district where the expected party defendant resides. If the individual agents are to be sued, properly the petition should be filed in the Florida district.

3. The petition fails to state the substance of the testimony they are attempting to perpetuate.

4. This petition for discovery should not, in any event, be entertained, since no federal district court would have jurisdiction over the subject matter of the action which petitioners propose to bring in the future.

Since the petition must show that the expected action will be within federal jurisdiction, a petition is insufficient if it shows the petitioner is presently unable to bring an expected action in

federal court merely because of the
absence of adequate grounds of federal
jurisdiction.

4 MOORE'S FEDERAL PRACTICE,
Paragraph 27.02[2], p. 1821

The cause of action alleged in Exhibit A to the petition will never be cognizable under the Federal Tort Claims Act, involving, as it does, the charge that government officials negligently fired upon an airplane being hijacked in violation of federal law, since the claim falls squarely within two exceptions to the Federal Tort Claims Act. The manner in which federal officials fulfill their duty to maintain law and order is discretionary, and petitioners' claim is thus within the exception provided by 28 U.S.C. § 2680(a). United States v. Faneca, 332 F.2d 872 (5th Cir. 1965) [involving the firing of tear gas into a crowd by federal marshals]. Insofar as any personal injuries were caused by shots fired by federal officials, even if the shots were fired negligently, the tort is a battery within the exclusion provided by 28 U.S.C. § 2680(h). Moos v. United States, 225 F.2d 705 (8th Cir. 1955); United States v. Faneca, supra.

It must, therefore, be concluded that this petition pursuant to Rule 27 of the Federal Rules of Civil Procedure may not be maintained, since the showing of jurisdiction in the proposed action is so tenuous.

In Petition of Ferkauf, 3 F.R.D. 89 (S.D. N.Y. 1943), the court denied a petition pursuant to Rule 27:


Doubtless, as seems to be assumed, this court would have jurisdiction if the action were brought here; but the presumption is always against jurisdiction in a Federal court. The petition should have been more definite on this point.

Petition of Ferkauf, supra, at p. 92

5. The Petition should not be entertained by the Court because it seeks an order to compel government employees to do what they are expressly forbidden to do.

28 CODE FED. REGS. §§ 16.12, 16.13 prohibit F.B.I. agents disclosing any information from agency files without prior approval of the Attorney General, even though ordered by the Court. Copies of these regulations are submitted herewith.

While 49 CODE FED. REGS. § 9.5 permits an F.A.A. employee to testify as to facts in proceedings against the United States (but not expert or opinion testimony), there is no authorization for discovery of agency records except upon clearance by the Department General Counsel.


CHARLES H. ANDERSON
United States Attorney

879 U. S. Court House
P. O. Box 800
Nashville, Tennessee 37202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon counsel of record for all parties at interest in this cause by hand delivery.

This the 26th day of Oct. 1971

Attorney United States Attorney

§ 16.6 Records of the Immigration and Naturalization Service and of the Board of Immigration Appeals.

(a) Requests for records of the Immigration and Naturalization Service (the "Service") or the Board of Immigration Appeals (the "Board") shall be made in accordance with the regulations of the Service found in 8 CFR 103.10.

(b) The Service is authorized to grant a request for a record filed on Form N-585 to the extent set forth in § 103.10 of its regulations. A request on Form N-585 involving any other Service or Board record shall be forwarded by the Service to the Deputy Attorney General together with (1) a copy of any identified record and a recommendation as to whether it shall be made available, or (2) a brief summary of what has been done to identify or find a record which could not be identified or found. The forwarding office will be notified promptly following the decision of the Deputy Attorney General and will give prompt notice thereof to the person submitting the request. Where appropriate, such notice will recite the place, time, and manner in which a record will be made available.

(c) Notwithstanding the provisions of this § 16.6 or of any other regulation, no officer or employee of the Service or of the Board shall make available any record which the Attorney General has determined shall not be made available.

§ 16.7 Administrative decision and review.

(a) All Forms D.J. 118 received at any of the offices listed in § 16.2 shall be forwarded to the Deputy Attorney General. If the office receiving the request also has possession of the record or a copy thereof, there shall be included with the forwarded Form D.J. 118 a copy of the record and a recommendation by that office whether the requested record should be made available.

(b) The Deputy Attorney General shall grant or deny each request made on a Form D.J. 118 or on a Form N-585 forwarded pursuant to § 16.6(b). The denial of each request shall be in writing and shall contain a simple statement of reasons for the denial. The decision of the Deputy Attorney General shall be final, subject only to review as provided in paragraph (c) of this section.

(c) Review of the decision of the Deputy Attorney General may be requested by the person submitting the Form D.J. 118 or N-585 within 30 days after the date of the notice advising him of the decision. The filing of a request for review may be accomplished by mailing to the Attorney General, Department of Justice, Washington, D.C. 20530, by certified mail, a copy of the written denial issued under paragraph (b) of this section and a statement of the circumstances, reasons or arguments advanced for insistence upon disclosure of the originally requested record. The decision after review will be promptly communicated to the person requesting review, and will constitute the final action of the Department.

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

§ 16.11 Purpose and scope.

This subpart contains the regulations of the Department of Justice concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a "demand") of a court or other authority is issued for the production or disclosure of (a) any material contained in the files of the Department, (b) any information relating to material contained in the files of the Department, or (c) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status. For the purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of, the Attorney General of the United States, including U.S. attorneys, U.S. marshals, and members of the staffs of those officials.

§ 16.12 Production prohibited unless approved by the Attorney General.

No employee or former employee of the Department of Justice shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department of Justice or disclose any information relating to material contained in the files of

the Department of Justice or disclose any information or produce any material acquired as a part of the performance of his official duties or because of his official status without the prior approval of the Attorney General.

§ 16.13 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Department of Justice for the production of material or the disclosure of information described in § 16.11, he shall immediately notify the Attorney General and the U.S. attorney for the district where the issuing court or other authority is located. The U.S. attorney shall immediately request instructions from the Attorney General. If possible, the Attorney General shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before the instructions from the Attorney General are received, the U.S. attorney or other attorney as may be designated for the purpose, shall appear with the employee or former employee of the Department upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Attorney General. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Attorney General.

§ 16.14 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 16.13(b) pending receipt of instructions from the Attorney General, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Attorney General not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (United States ex rel Touby v. Ragen, 340 U.S. 462).

PART 21—WITNESS FEES

- Sec. 21.1 Officers and employees of the United States summoned as witnesses.
- 21.2 Witnesses at administrative hearings.
- 21.3 Fees and allowances of witnesses in the District of Alaska.
- 21.4 Use of table of distances.
- 21.5 Certification of witness attendance.

§ 21.1 Officers and employees of the United States summoned as witnesses.

Officers and employees of the United States summoned as witnesses for the Government in cases before U.S. courts (including such courts in the possession of the United States) or U.S. marshals shall be entitled (a) to necessary expenses incident to travel by common carrier, or, if travel is made by privately owned automobile, to mileage at the rate of 10 cents a mile, and (b) to a per diem allowance in lieu of subsistence at a rate of \$25 within the continental United States (the area of the former 48 States and the District of Columbia), and at the maximum rates prescribed by the President or his delegate pursuant to 5 U.S.C. 5702, outside the continental United States. Such allowances shall be paid in accordance with the provisions of the Standardized Government Travel Regulations.

(Order No. 424-70, 25 P.R. 883, Jan. 22, 1970)

§ 21.2 Witnesses at administrative hearings.

Whenever a department is authorized to hold hearings and to subpoena witnesses, the witnesses shall be entitled to the same fees and mileage, or expenses in the case of Government officers and employees, as provided by law for witnesses attending in the United States courts.

(5 U.S.C. 503; 28 U.S.C. 1823) [14 P.R. 601, Oct. 25, 1949]

§ 21.3 Fees and allowances of witnesses in the District of Alaska.

The fees and allowances of witnesses in the District of Alaska shall be as follows:

(a) For attendance at the District Court or before any officer pursuant to law, including a commissioner acting in any capacity authorized by law, and for the time necessarily occupied in traveling from their place of residence to the place of trial or hearing and in returning therefrom, witnesses shall be entitled to \$24 a day.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION.

BIG BROTHER AIRCRAFT, INC.,
et al.

V.

CIVIL NO. 6322

JOHN VOLPE, et al.

MEMORANDUM IN OPPOSITION
TO INTERVENTION

The Government opposes the motions to intervene by WLAC-TV, Inc., and WSM, Inc., on the following grounds:

1. The Motions on their face lack merit in that the Petitions fail to meet the test of FED. R. CIV. P. 24(a) that the disposition of case in which they seek to intervene would impair or impede their ability to protect their interest.

The agreed Order entered by this Court October 8, 1971 expressly ordered the defendants to preserve the subject tapes in their original form subject to further orders of the Court. Hence, the very relief sought has already been granted, i.e., the tape recordings are to be preserved intact in the possession of the defendants.

2. The interventions would be premature in that the intervenors have failed to utilize the exclusive administrative procedure provided, which also are designed to provide the government agencies involved adequate time to consider the request, formulate a position, and take appropriate action.

The Public Information Act, 5 U.S.C. Section 552(a)(3), provides for judicial review only after the agency has withheld a record after proper request, viz., "in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedures to be followed."

The Court may take judicial notice of the procedure to be followed by the respective agencies which is specified as follows:

Federal Aviation Administration - 49 CODE FED. REGS. Section 7.

Section 7.45 requires coordination and agreement with another agency if the latter has the primary interest

Section 7.61(a) (2) exempts from disclosure "Information concerning any pending matter, including any claim ... to be resolved before a court of law, administrative board...."

Section 7.65 exempts investigative files "to preserve the position of the Government in litigation or potential litigation" subject to the usual rules of court discovery.

Section 7.71 specifies the procedure to be followed for reconsideration.

Section 7.83 specifies the fees payable.

Department of Justice (including F.B.I.) - 28 CODE FED. REGS.

Section 16.

Sections 16.1 through 16.4 describe the exclusive procedure whereby information may be obtained under the Public Information Act.

Section 16.5 discusses exemptions from the Act by reference to THE ATTORNEY GENERAL'S MEMORANDUM ON THE PUBLIC INFORMATION SECTION OF THE ADMINISTRATIVE PROCEDURE ACT (1967).

Notwithstanding the procedural defects of the intervenors action, the Public Information Act specifically exempts "investigatory files." 5 U.S.C. Section 552(b) (7).

Congressional intent was that this was intended to exempt "files prepared in connection with related Government Litigation" (THE ATTORNEY GENERAL'S MEMORANDUM, supra at pp. 37-38), since these statements "might contain information unfairly damaging to the litigant or other persons."

Any court proceedings under the Act are a trial de novo, and injunctive relief is based upon the usual equitable considerations, including the purpose and needs of the plaintiff, the burdens involved, and the importance to the public interest of the agency's reason for nondisclosure. See Hecht Co. v. Bowles, 321 U.S. 321 (1944); United States v. Reynolds, 345 U.S. 1 (1953).

Under the language of the statute, the agency is the only party defendant. [See THE ATTORNEY GENERAL'S (Ramsey Clark) MEMORANDUM ON THE PUBLIC INFORMATION SECTION OF THE ADMINISTRATIVE PROCEDURE ACT (1967), pp. 28-29.]

The statute contemplates a separate suit, after exhaustion of the administrative procedure, with the government having the usual 60 days after service of summons and complaint in which to answer. FED. R. CIV. P. 12(a).




CHARLES H. ANDERSON
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P. O. Box 800
Nashville, Tennessee 37202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon counsel of record for all parties at interest in this cause by placing same in the United States mail addressed to said counsel at his office.

This the 26th day of Oct. 1971

Assistant United States Attorney

discourage frivolous requests, especially for large quantities of records the production of which would uselessly occupy agency personnel to the detriment of the proper performance of other agency functions as well as its service in filling legitimate requests for records.

JUDICIAL REVIEW UNDER SUBSECTION (c)

"Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated shall have jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action. In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way."

Any person from whom an agency has withheld a record after proper request under subsection (c) may file a complaint in the appropriate United States district court. The agency then has the burden to justify the withholding, which it can satisfy by showing that the record comes within one of the nine exemptions in subsection (c).

While it is not the purpose of this memorandum to discuss the jurisdiction of the district courts or the procedures in such cases, it should be noted that most cases arising under subsection (c) will be handled by the General Litigation Section of the Civil Division of the Department of Justice. In those cases, upon receipt of a copy of the summons and complaint served upon the Attorney General and notification of its filing by the United States Attorney (see Rule 4, Federal Rules of Civil Procedure), the General Litigation Section will request the agency to furnish a litigation report.

Since subsection (c) provides that these cases should be given a priority on the court docket, the agency should similarly accord priority to the submission of its report in order that a timely response to the complaint may be filed, thus avoiding the necessity of requesting extensions of time.

Some agencies are authorized to conduct their own litigation. Where its authority permits, the agency may decide to handle its own cases under this act. In view of the general litigation responsibility which the Department of Justice has for all other departments and agencies in the executive branch, it is important that agencies handling their own litigation under this act keep the Department of Justice currently informed of their progress and forward to the Civil Division copies of significant documents which are filed in such cases.

The House report aptly describes the district court proceeding under subsection (c) as follows (H. Rept., 9) :

"The proceedings are to be *de novo* so that the court can consider the propriety of the withholding instead of being restricted to judicial sanctioning of agency discretion. The court will have authority whenever it considers such action equitable and appropriate to enjoin the agency from withholding its records and to order the production of agency records improperly withheld. The burden of proof is placed upon the agency which is the only party able to justify the withholding. A private citizen cannot be asked to prove that an agency has withheld information improperly because he will not know the reasons for the agency action."

The injunction is an equitable remedy. As the above language recognizes, in a trial *de novo* under subsection (c) the district court is free to exercise the traditional discretion of a court of equity in determining whether or not the relief sought by the plaintiff should be granted. In making such determination the court can be expected to weigh the customary considerations as to whether an injunction or similar relief is equitable and appropriate, including the purposes and needs of the plaintiff, the burdens involved, and the importance to the public interest of the Government's reason for nondisclosure. See *Hecht Co. v. Bowles*, 321 U.S. 321 (1944); *United States v. Reynolds*, 345 U.S. 1 (1953); 2 *POWELL'S EQUITY JURISPRUDENCE* §§ 397-404 (Symons 5th ed. 1941).

It should also be noted that district court review is designed to follow final action at the agency head level. The House report states that "if a request for information is denied by an agency subordinate the person making the request is entitled to prompt review by the head of the agency." (H. Rept., 9.) In reviewing this action, the district court is granted "jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant." Jurisdiction of a suit against agency officers, as distinguished from the agency itself, is not explicitly granted. The subsection also provides that "in the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt."

These provisions seem to assume the usual two-step procedure followed by courts of equity in contempt proceedings for violation of court orders. Following the statutory plan, the district court would presumably issue an order directed to the agency, which, under the language of the statute, is the only party defendant. In the event of noncompliance with the order—which would presumably have been served upon the head of the agency or whomever he delegated to make the final agency decision—the court would probably issue an

SUBSECTION (d) VOTING RECORDS

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order to show cause directed to the responsible officer, which he would then have opportunity to answer. Subordinate officials who are not responsible for final agency action have a duty to follow the instructions of the agency head or his delegate and are probably not subject to the contempt provision. See *Touhy v. Ragen*, 310 U.S. 462 (1951).

SUBSECTION (d)—VOTING RECORDS OF AGENCY MEMBERS

"(d) AGENCY PROCEEDINGS.—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and such record shall be available for public inspection."

This subsection applies, of course, only to the votes of members of boards, commissions, etc., and not to agencies headed by a single administrator. Originally, the provision required that a public record be kept of all votes by agency members. After study, the Senate committee concluded that there might be "considerable disadvantage" in the disclosure of "preliminary votes." (S. Rept. 88th Cong., 7.) Therefore, the provision was revised to apply only to "final votes of multi-headed agencies in any regulatory or adjudicative proceeding." (H. Rept., 9.) Again, the exemptions of subsection (c) apply as well to this subsection as to the other subsections.

SUBSECTION (c)—EXEMPTIONS

"(c) EXEMPTIONS.—The provisions of this section shall not be applicable to matters that are * * *"

We have noted above that subsection (c), containing the exemptions, applies to all of the various publication and disclosure requirements of the new section 3. Adoption of this structure, rather than the tailoring of specific exemptions to each of the disclosure requirements contained in subsections (a), (b), (c), and (d), inevitably creates some problems of interpretation. An appropriate exemption from the Federal Register publication requirements of subsection (a) is not necessarily an appropriate reason for keeping secret a record requested under subsection (c). Exemption (2), for example, which relieves from all of the requirements of the act "matters that are * * * related solely to the internal personnel rules and practices of any agency," obviously is an appropriate exemption from the requirements of subsection (a) governing publication in the Federal Register. However, in the case of a request for access to a particular document under subsection (c), a strict, literal application of the language of exemption (2) frequently might produce incongruous results, shield-

porations and other organizations as well as individuals. The kinds of files referred to in this exemption, however, would normally involve the privacy of individuals rather than of business organizations.

Another possible area of invasion of privacy would be the furnishing of detailed information concerning Government employees or others. The House report (p. 6) notes that the Civil Service Commission has ruled that "the names, position titles, grades, salaries, and duty stations of Federal employees are public information." It seems reasonable to assume that the Congress regarded with approval the Commission ruling, which in a letter of March 17, 1966 addressed to the heads of Departments and agencies gives examples of the circumstances under which such information should be made available, and establishes guidelines to govern the discretion to disclose such information concerning Government employees. (See Cong. Rec., March 21, 1966, pp. A 1598-1599.) To assure the privacy sought to be protected by exemption (6), similar guidelines should apply to requests concerning lists of persons who are not Government employees. It should be noted that the Commission ruling referred to above does not authorize the release of employees' home addresses. Whether such addresses are protected by this exemption would depend upon the context in which they are sought.

(7) INVESTIGATIONS

"The provisions of this section shall not be applicable to matters that are . . . (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a private party;"

The House report emphasizes that the term "law enforcement" is used in exemption (7) in its broadest sense, to include the enforcement not only of criminal statutes, but rather of "all kinds of laws, labor and securities laws as well as criminal laws." (H. Rept., 11.) Thus, the files compiled from investigation by Government agents into charges of unfair labor practices would be exempt as investigatory files compiled for the purpose of enforcing the labor laws. Similarly, a file compiled by the Immigration and Naturalization Service in the investigation of an application by an alien for adjustment of status, or one compiled by the Securities and Exchange Commission concerning violation of securities regulations, would be exempt as investigatory files compiled for the purpose of enforcing the immigration and securities laws respectively.

Frequently the investigations which are made reflect violations of law or circumstances requiring redress by administrative proceedings or litigation. The House report makes clear that in such cases the additional "files prepared in connection with related Government liti-

gation and adjudicative proceedings" are included within the exemption. (H. Rept., 11.)

It should be noted that the language "except to the extent available by law to a private party" is very different from the phrase, "which would not be available by law to a private party in litigation with the agency," used in exemption (5). The effect of exemption (5) is to make available to the general public those internal documents from agency files which are routinely available to litigants, unless some other exemption bars disclosure. The effect of the language in exemption (7), on the other hand, seems to be to confirm the availability to litigants of documents from investigatory files to the extent to which Congress and the courts have made them available to such litigants. For example, litigants who meet the burdens of the Jencks statute (18 U.S.C. 3503) may obtain prior statements given to an FBI agent or an SEC investigator by a witness who is testifying in a pending case; but since such statements might contain information unfairly damaging to the litigant or other persons, the new law, like the Jencks statute, does not permit the statement to be made available to the public. In addition, the House report makes clear that litigants are not to obtain special benefits from this provision, stating that "S. 1160 is not intended to give a private party indirectly any earlier or greater access to investigatory files than he would have directly in such litigation or proceedings." (H. Rept., 11.)

(8) INFORMATION CONCERNING FINANCIAL INSTITUTIONS

"The provisions of this section shall not be applicable to matters that are . . . (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions;"

The meaning and purpose of this exemption are obvious. It is "designed to insure the security and integrity of financial institutions, for the sensitive details collected by Government agencies which regulate these institutions could, if indiscriminately disclosed, cause great harm." (H. Rept., 11.)

An earlier version of exemption (4) protected trade secrets, but made no mention of financial information and would not have protected information developed by agency investigators and examiners, as distinguished from information "obtained from the public." Exemption (4) as enacted, however, covers commercial and financial information as set forth at pp. 32-34 above. Exemption (8) emphasizes the intention of the revision to protect information relating to financial institutions which may be prepared for or used by any agency responsible for the regulation or supervision of such institutions.

IN THE UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE

Nashville Division

FILED

OCT 28 1971

MRS. BRENT QUINTON DOWNS and ANDREW)
ARTHUR DOWNS, 622 Paces Ferry Road,)
Nashville, Tennessee,)

SUSAN GERMAINE GIFFE and MAJOR AND)
MRS. JOSEPH S. LAKICH, 4122 Moss)
Rose Drive, Nashville, Tennessee,)

BIG BROTHER AIRCRAFT, INC., and)
M. P. BROTHERS, JR., Nashville)
Metropolitan Airport, Nashville,)
Tennessee,)

Petitioners,)

v.)

UNITED STATES OF AMERICA,)

Respondent.)

BRANDON LEWIS, Clerk

BY _____ D.C.

CIVIL ACTION NO. 6348

PETITIONERS' MEMORANDUM BRIEF

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- III. Disclosure of Tape Recordings
- IV. Miscellaneous Objections by Government

I. Introduction

The ultimate question in the case is whether the wife and child of Brent Downs, the child of Susan Giffe and the aircraft owner should bear the full burden of their losses without compensation or whether some part of their losses should be distributed to society in the form of compensation to the injured persons. Translating this question into legal language:

Were agents and employees of the United States guilty of negligent, reckless or other tortious conduct in disregard of life and property when they enticed the pilot to land the hijacked airplane at Jacksonville by promising to follow his instructions and then refused to refuel or stay clear of the plane as instructed and fired upon the plane thereby causing the deaths of Brent Downs and Susan Giffe and damage to the plane; and if they were guilty of tortious conduct, has the United States waived its immunity from such liability under the Federal Tort Claims Act?

Federal rule of Civil Procedure 27 requires that petitioner show that they expect to be parties "to an action cognizable in" federal court. We agree with the government that this means that petitioners must be able to present a claim which this Court has the power to hear and determine on the merits. On the basis of the facts asserted herein, as well as in our petition and administrative claim including the transcriptions of the tape recordings attached thereto, our position is that we have stated a claim showing that United States employees and agents were guilty of tortious conduct and that their conduct is not subject to any exception to liability under the Federal Tort Claims Act.

The expected action in this case must meet the requirements for stating a claim cognizable under that act, and the purpose of this pre-action petition is to secure and perpetuate evidence respecting the tortious acts. Our investigations so far disclose no facts bringing the case within an exception to liability under the act, and we suggest that government counsel should assert at this time any facts in its possession that would demonstrate that the conduct of United States employees and agents falls within an exception to the liability created under the act.

II. Is the Claim "Cognizable Action" in
the Middle District of Tennessee

1. Venue.--There is no problem with laying venue in this court under the applicable venue statute, 28 U.S.C. § 1402(b) which says:

Any civil action on a tort claim against the United States under subsection (b) of section 1356 of this title [vesting jurisdiction of Federal Tort Claims Act cases in federal district courts] may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred. (Emphasis added.)

Mosseller v. United States, 158 F.2d 380 (2d Cir. 1946), demonstrates that this court has jurisdiction and venue not only of the expected action but also of the Rule 27 motion in this case. In Mosseller (an action to secure and perpetuate testimony under Rule 27 for use in an action under the Suits in Admiralty Act, requiring the filing of an administrative claim and providing a statutory delay for filing suit) the petition to perpetuate evidence was filed against the United States in the Southern District of New York, the district which would have jurisdiction of the personal injury case under the Suits in Admiralty Act. The court held that the petition for securing evidence was maintainable in that district. In the case at bar the Middle District of Tennessee has jurisdiction and venue of the Federal Tort Claims Act case because all plaintiffs reside within this district, and the defendant is subject to service of process here. Therefore, this court has jurisdiction and venue to hear this petition to secure evidence.

2. Nature of Tort Liability Under Federal Tort Claims Act.--The United States has partially waived its traditional immunity from tort liability by sections 2674 and 2680 of the act, and petitioners' rights of recovery are governed basically by the court's interpretation of these two sections aided by the case law developed under them. Section 2674 says that the

government shall be liable in tort "in the same manner and to the same extent as a private individual under like circumstances."

The government in its memorandum asserts it is still immune from tort liability in this case because of two exceptions provided in section 2680 as follows:

The provisions of this chapter and section 1346(b) of this title shall not apply to--

(a) any claim . . . based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government, whether or not the discretion involved be abused.

(h) any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights.

"We will discuss" the government's position with respect to assault and battery first because this order of discussion will be helpful in defining or characterizing the nature of our claim at common law, keeping in mind that the act defines and characterizes the government's liability in part in terms of well-known common law concepts and in part in terms of concepts unknown to the common law.

A. Assault and Battery.--The facts alleged in this case do not make out a case of assault and battery, and petitioners are making no claim against the government for an intentional tort of this kind. Prosser describes the common law distinction between negligence and intent:

In negligence the actor does not desire to bring about the consequences which follow, nor does he know that they are substantially certain to occur or believe that they will. There is merely a risk of such consequences, sufficiently great to lead a reasonable man in his position to anticipate them, and to guard against them. . . . As the probability of injury to another, apparent from the facts

within knowledge, becomes greater, his conduct takes more of the attributes of intent, until it reaches that substantial certainty of harm . . . inseparable from intent itself.

Prosser, Torts 145 (4th ed. 1971).

Prosser summarizes the elements of the common law tort of battery as follows:

- (i) There must be an "unpermitted contact with plaintiff's person"; the interest is in protecting "the integrity of his person" not a chattel he owns. (ii) "The act must cause, and must be intended to cause, an unpermitted contact. Mere negligence, or even recklessness, which creates only a risk that the contact will result, may afford a distinct cause of action in itself, but under modern usage of the term it is not enough for battery."

Prosser at 34-35.

The federal cases under the Tort Claims Act make this same distinction, a distinction applicable to the case at bar. For example, in Panella v. United States, 212 F.2d 622 (2d Cir. 1954), Judge (now Mr. Justice) Harlan, while on the Second Circuit bench, said that a claim by an inmate of a federal narcotics institution in Lexington, Kentucky, for failing to provide adequate guards and otherwise properly supervising those confined in the institution, thereby permitting another inmate to enjoin the plaintiff by committing an assault and battery, may be remedied under the Tort Claims Act by an action for damages. Judge Harlan went on to say that the exception under the Tort Claims Act for actions of assault and battery is not applicable because here the battery was by a third person as a result of the negligence of the internal security personnel at the Lexington hospital. This position was reaffirmed in Muniz v. United States, 305 F.2d 285 (2d Cir. 1962), aff'd 374 U.S. 150 (1963). The court held that an action for injuries by a federal prisoner against the United States under the Tort Claims Act for alleged negligence in handling prisoners did not fall within the exception barring

claims arising out of assault and battery since this exception applies only to assaults by government agents, and not to assaults by third parties which the government negligently failed to prevent. In affirming the lower court decision holding the government liable, a unanimous Supreme Court, speaking through Chief Justice Warren, said:

First, the government's liability is no longer restricted to circumstances in which government bodies have traditionally been responsible for misconduct of their employees. The Act extends to novel and unprecedented forms of liability as well. *Indian Towing Co. v. United States*, 350 U.S. 61; *Rayonier, Inc. v. United States*, 352 U.S. 315.

The Federal Tort Claims Act provides much needed relief to those suffering injury from the negligence of government employees. We should not, at the same time that state courts are striving to litigate the hardships caused by sovereign immunity, narrow the remedies provided by Congress. As we said in *Rayonier, Inc., v. United States*, 352 U.S. at 320, 'There is no justification for this Court to read exemptions into the Act beyond those provided by Congress. If the Act is to be altered that is a function for the same body that adopted it.'

374 U.S. 159, 163-166.

Chief Justice Warren then went on to hold that the conduct of prison officials in negligently failing to guard against injury to inmates is not an exception under subsection (h) excluding actions for assault and battery or under subsection (a) excluding claims based on the performance of a discretionary function. See also *Underwood v. United States*, 356 F.2d 92 (5th Cir. 1966).

Petitioners do not claim that United States employees intended to injure Downs and Susan Giffe by their actions, and even though the government has stated in its memorandum in opposition that the case falls into the assault and battery exception, we do not believe the government really intends to try to escape liability by claiming that the agents intended to commit a battery which, if true, would constitute murder in the criminal context. If it is the government's real intention to make such a claim, it should come forward with facts demonstrating

the intentional character of the harm caused by air agents.

The Faneca case cited in the government's memorandum in opposition, 332 F.2d 872 (5th Cir. 1965) is easily distinguishable. There federal marshalls fired tear gas at the plaintiff, a member of a mob engaged in an effort to block James Meredith's entry into the University of Mississippi. Plaintiff was directly injured by the shot fired by the federal official and the court therefore held the assault and battery exception to be applicable.

B. Trespass to Chattel.--Petitioners do, however, intend to charge the government with one intentional tort in connection with the damage to the aircraft. In addition to charging the government with negligent and reckless interference with the airplane by failing to protect it from damage, petitioners intend also to charge that the government agents permitted the intentional tort of trespass to personal property, the elements of which Prosser describes in detail in his treatise at page 76. While subsection (h) of section 2680 quoted above excepts certain intentional torts, it does not exclude trespass, a tort claim therefore covered by section 2674 for which petitioner Big Brother Aircraft, Inc., intends to sue under the act. The courts have made it clear that an action for trespass to chattel or land will lie under the act.

Hatahley v. United States, 351 U.S. 173 (1956); Bushey & Sons, Inc. v. United States, 276 F. Supp. 518 (D.C.N.Y. 1967), aff'd 398 F.2d 167 (2d Cir. 1968).

C. The Discretionary Function Exception.--The statutory description of this exception is intentionally vague so as to give federal courts the power to protect the government from liability for policy type decisions; and, as one might expect in connection with a standard so vaguely worded, there has been substantial litigation concerning the exception. On a case by case basis over the past 25 years, however, the courts have

given meaning to its language that makes sense. The courts have recognized that it is obvious that most claims for damages caused by negligent acts are based upon the abuse of discretion, either in the exercise or failure to exercise discretion. The mail truck driver hurrying to get a load of mail on a departing train exercises discretion in deciding whether to make a left turn before oncoming traffic or to wait until that traffic has passed. The courts have recognized that it is just as obvious that such discretionary determinations must not be excluded if the act is to have any effect. Courts have therefore interpreted the exception as immunizing the government from liability for the enactment of a statute or the decision of an administrative official issuing a regulation, establishing a policy or formulating plans of general application. Prosser describes the standards developed by the courts in interpreting this exception as follows:

In the outstanding case of *Dalehite v. United States*,³¹ this was held to mean that negligent decisions of government officials in adopting a plan for the export of fertilizer, in controlling its manufacture, in handling and shipment of the product, and in failing to police the shipboard loading, all of which were made at the "planning or policy" level, afforded no basis for liability of the United States. There has been general agreement that high level policy judgments, as for example, as to a change in the course of the Missouri River,³² measures to protect migratory fowl,³³ to conduct tests of nuclear explosions,³⁴ or the decision not

31. 1953, 346 U.S. 15. See Heuser, *Dalehite v. United States: A New Approach to the Federal Tort Claims Act*, 1954, 7 Vand. L. Rev. 174; Notes, 1953, 66 Harv. L. Rev. 488; 1953, 45 Ill. L. Rev. 791; 1951, 27 Ind. L.J. 121; 1951, 52 Mich. L. Rev. 733.

32. *Coates v. United States*, 8 Cir. 1950, 181 F.2d 816.

33. *Sickman v. United States*, 7 Cir. 1950, 184 F.2d 616, cert. denied 341, U.S. 939, rehearing denied 342 U.S. 843.

34. *Bartholomae Corp. v. United States*, S.D. Cal. 1955, 135 F. Supp. 651; *Bulloch v. United States*, D. Utah 1955, 133 F. Supp. 885.

to operate a seized coal mine,³⁵ cannot result in liability; and this is true even though the planning level involves the drafting of specifications, schedules and procedures.³⁶

Where the decision occurs at the "operational" level of government activity, which is to say, when it is made by one who is actually engaged in carrying out the work in the field, there have been cases³⁷ which have declared that there is no less involved in the way of opinion, judgment and "discretion," and there can be no liability. There have been as many cases, however, which have held that such "operational" exercises of discretion are not those contemplated by the Act;³⁸ and this seems definitely indicated as the position of the Supreme Court.³⁹ Thus, while the decision of the Civil Aeronautics Authority to establish an instrument approach pattern for an airport is "planning," the failure of the pilots to take precautions against frightening horses in landing is "operational;" and while the United

35. *Old King Coal Co. v. United States*, S.D. Iowa 1949, 88 F. Supp. 124.

36. *Dalehite v. United States*, 1953 (making and shipping fertilizer); *United States v. Ure*, 9 Cir. 1955, 225 F.2d 709 (decision not to line canal with concrete); *Thomas v. United States* W.D. Mo. 1949, 81 F. Supp. 881 (angles of dikes in flood control project); *Sisley v. United States*, D. Alaska 1962, 202 F. Supp. 273 (design of road crossings and culvert grades for national highway).

37. *Denny v. United States*, 5 Cir. 1948, 171 F.2d 365 (refusal to extend medical care to wife of serviceman); *Fahey v. United States*, S.D.N.Y. 1957, 152 F. Supp. 535 (district attorney's refusal to prosecute); *Olson v. United States*, D.N.D. 1950, 93 F. Supp. 150 (opening flood gates); *Dugan v. United States*, D.D.C. 1956, 147 F. Supp. 674 (hospital ward in which mental patient to be confined); *Smart v. United States*, 10 Cir. 1953, 207 F.2d 841 (decision to release mental patient).

38. *American Exchange Bank v. United States*, 7 Cir. 1958, 257 F.2d 938 (decision not to install handrail on stairs); *United States v. Union Trust Co.*, D.C. Cir. 1955, 95 U.S. App. D.C. 189, 221 F.2d 62, affirmed per curiam in *Union Trust Co. v. Eastern Air Lines*, 350 U.S. 907 (decision of controller of air traffic not to warn aircraft of collision); *Friday v. United States*, 9 Cir. 1957, 239 F.2d 701 (ordering tired driver to continue on long trip); *Fair v. United States*, 5 Cir. 1956, 234 F.2d 288 (release of mental patient); *White v. United States*, 4 Cir. 1963, 317 F.2d 13 (grounds privilege to same).

39. See, in addition to the *Dalehite* case, supra, note 31, *Indian Towing Co. v. United States*, 1955, 350 U.S. 61, where failure of those in charge of a lighthouse to check the electrical system was said to be upon the "operational level," and to involve no "discretion" within the meaning of the Act.

States is not liable for the one, it is for the other.

A good case in the Ninth Circuit⁴¹ has summarized some of the distinctions made along those lines, as follows:

"Discretionary to undertake fire-fighting, lighthouse, rescue, or wrecked-ship marking services, but not discretionary to conduct such operations negligently; discretionary to admit a patient to an Army hospital, but not discretionary to treat the patient in a negligent manner; discretionary to establish a post office at a particular location, but not to negligently fail to establish handrails; discretionary to establish control towers at airports and to undertake air traffic separation, but not to conduct the same negligently; discretionary to reactivate an airbase, but not to construct a drainage and disposal system thereon in a negligent fashion; and discretionary for CAA to conduct a survey in low flying, twin-engine airplane, but not for pilots thereof to fly negligently."⁴²

40. Dahlstrom v. United States; 8 Cir. 1956, 228 F.2d 819.

41. United Air Lines, Inc. v. Wiener, 9 Cir. 1964, 335 F.2d 379, 393, cert. dismissed 379 U.S. 951.

42. Citing cases in footnotes, which are here omitted.

That federal employees controlling aircraft at airports under circumstances where the safety of the aircraft and its passengers is dependent upon such employees, are not in the exercise or performance of a discretionary function or duty so as to exempt the United States from liability under the provisions of 28 U.S.C. § 2680, seems to be beyond peradventure of a doubt. In Eastern Airlines v. Union Trust Co., 221 F.2d 62 (D.C. Cir. 1955) aff'd per curiam, 350 U.S. 907, suit was brought under the act against the airlines company and against the United States to recover for the death of passengers on the plane arising out of a collision between the passenger plane and another plane while both were attempting to land at a controlled public airport owned by the United States. The accident occurred at Washington National Airport and resulted in damage verdicts against Eastern and the United States of America. The principal question on the government's appeal was

whether the United States had consented to be sued for negligence of its control tower employees in regulating air traffic at a public airport.

The court said, at page 73:

The Government insists that its tower operators perform governmental functions of a regulatory nature; that no private individual has such power of regulation; that therefore the Act does not permit suit based on negligent performance of their duties.

The government contended that since a private individual could not thus regulate, the claims were excluded from the coverage of the Tort Claims Act. The court reviewed the history of the act and the history of establishing control towers at various airports throughout the country, and the evidence showed that in towers which were not directly controlled by CAA employees, the operators in non-government towers must be certified by the CAA before they could control civil aircraft in air commerce. This was pertinent only in relation to the court's answer to the government's first defense by which the court observed that there was no reason that private individuals could not construct and operate an airport with its own operators certificated by the CAA.

The court then turned to the government's contention that the controllers were performing a discretionary function in "that the tower operators' duties are public in nature and involve the exercise of discretion and judgment, with the result that neither the operators nor the United States can be held liable for their negligent performance." The court said, at page 75:

We hold that the tower operators merely handle operational details which are outside the area of the discretionary function and duties referred to in § 2680(c); and that, consequently, the Tort Claims Act permitted the government to be sued for damage sustained because of their negligence.

The court cited as authority Costley v. United States, 181 F.2d 723 (5th Cir. 1950) (involving negligent injuries to a Master Sergeant's wife who was admitted to the maternity section in the Army hospital); Somerset Seafood Co. v. United States, 193 F.2d 631 (4th Cir. 1951); and United States v. Gray, 199 F.2d 239 (10th Cir. 1952). The court then held that these cases were neither overruled nor impaired by the latest decision of the Supreme Court in Dalehite v. United States, 346 U.S. 15, 73 S. Ct. 956 (1953). After quoting extensively from Dalehite, the court said and held at page 76:

We may fairly infer from the statement just quoted that the United States is liable for the negligence of its employees at the operational level, where there is no 'room for policy judgment and decision.'

The court said further at page 77 (in part commenting upon Dalehite and the liability of the Coast Guard considered therein):

Had the Coast Guard authorities decided to supervise the storage, we have no doubt the United States would have been liable in tort for any causal negligence of its personnel acting at the operational level. So it is here: discretion was exercised when it was decided to operate the tower, but the tower personnel had no discretion to operate it negligently.

The trial court found as its negligence that there was a failure of the control tower to issue a proper warning to the Eastern plane, in clearing both planes for the same runway at the same time, and the failure to keep both planes advised as to the activities of the other. The D.C. court said at page 78:

The three negligent omissions and the one affirmative negligent act found by the court were not 'decisions responsibly made at a planning level' and did not involve any consideration important to the practicality of the government's program of controlling aircraft at public airports. The tower operators acted, and failed to act, at an operational level. While they were in a sense

exercising discretion as to what they should and should not do, they were not performing the sort of discretionary functions contemplated by § 2680(a) and clearly described in the Dalehite decision.

It is therefore our opinion that, if a government towerman negligently clears two planes to land on the same runway at the same time, or is guilty of some other negligent act or omission in doing his work, the government is liable for resulting injury in the same manner and for the same reason that it is liable for injury done by the driver of a mail truck who, in exercising discretion as to how to drive, negligently runs through a red traffic light.

Accord: *Hartz v. United States*, 387 F.2d 870 (5th Cir. 1968); *Ingham v. Eastern Airlines*, 373 F.2d 227 (2d Cir. 1967); *United Airlines, Inc. v. Wiener*, 335 F.2d 379 (9th Cir. 1964); *Furumizo v. United States*, 245 F. Supp. 981 (Hawaii 1964); *Wenninger v. United States*, 234 F. Supp. 499 (Del. 1964); *Wildwood Mink Ranch v. United States*, 218 F. Supp. 67 (Minn. 1963).

Like the FAA personnel cases, the few existing FBI and IRS cases also hold that the operations of government law enforcement agents in performing their duties is not a discretionary function. In *Sullivan v. United States*, 129 F. Supp. 713 (D.C. Ill. 1955), the court held that a special agent of the Federal Bureau of Investigation was not performing a discretionary function in pursuing a person whose arrest had been ordered by the Department of Justice, and the United States is liable for the agent's negligence in the operation of an automobile at an excessive rate of speed in pursuit of and for the purpose of apprehending a fugitive. Similarly, in *Swanner v. United States*, 309 F. Supp. 1183 (D.C. Ala. 1970), an IRS informant was placed in a position of danger as a result of testifying for the government which failed to provide protection for him and his family resulting in injury to members of his family when a bomb exploded under his house. The court held that these injuries were the result of negligence of the government in not providing protection.

Under the cases, therefore, the negligent and reckless

conduct of law enforcement agents at the operational level subjects the United States to liability in the same way that the negligence of airport tower operators subjects the United States to liability. In the present case, in order to escape liability under the discretionary function exception, the government would have to show that the FBI has a policy or has made a decision of general application at the administrative level to attempt to entice hijacked planes to the ground by promising to follow the pilot's requests and instructions and then to refuse to refuel such hijacked planes and to forestall takeoff despite the pilot's instructions and requests and despite the obvious danger of injury or death to the occupants by following such a course. Our investigation does not disclose any such policy or decision of general application, and therefore we conclude that there is no basis for applying the discretionary function exception.

III. Disclosure of Tape Recordings

The answer to the court's question respecting the public character of radio communications between United States airport tower personnel and occupants of airplanes is given in the Sixth Circuit case of Brown v. Civil Aeronautics Board, 324 F.2d 523 (6th Cir. 1963), in which Judge Peck, speaking for a panel composed of Chief Judge Phillips and Judge Cecil, said:

At the hearing before the Board's examiner, the chief controller of the Detroit Willow Run and Willow Metropolitan Control Towers testified that it was "standard procedure" to record communications between pilots and that the conversation between petitioner and the commercial airline pilot hereinabove referred to was so recorded. Testimony from this source was then received, and petitioner claims that such use is prohibited by Section 605, Title 47, United States Code. That section provides that it shall not apply "to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcast, or transmitted by amateurs or others for the use of the general public, or relating to ships in distress," and this provision would appear to make the use complained of permissible. However, that determination need not be here made because

the channels used for the conversation at issue were authorized aeronautical frequencies. The assignment of these frequencies is for the purpose of permitting communications between traffic control personnel and pilots, and between pilots, and no element of privacy is involved. Pilot and tower conversations are permissible evidence in proceedings such as the one here involved (Specht v. Civil Aeronautics Board, 254 F.2d 905 (C.A. 8, 1958)) and in civil suits involving aircraft accidents (Universal Airline v. Eastern Air Lines, 88 U.S. App. D.C. 219, 188 F.2d 993 (1951); Eastern Air Lines v. Union Trust Company (United States v. Union Trust Company), 95 U.S. App. D.C. 189, 221 F.2d 62 (1955), affirmed in part, 350 U.S. 907, 76 S. Ct. 193, 100 L. Ed. 799). The procurement and use of information from such a source as here involved does not fall within any prohibitions against "wire tapping."

The opinion in the above case makes it clear that the tape recordings in the instant case are not privileged communications, and even if they were, have now been placed in the public domain by radio broadcast. The tapes do not mention the defendant Wallace and in no way affect his innocence or guilt. There is no legitimate interest to be served by keeping the tapes secret.

Petitioners request the court to make the tape transcriptions a part of the official record in this case and therefore to permit petitioners and their attorneys to use the tapes and to publish their contents in the further investigation of the case. Petitioners cannot make proper use of the recordings in their investigation of the case. Petitioners cannot make proper use of the recordings in their investigation if they are not permitted to disclose the contents of the tapes in the taking of depositions and other investigation.

Moreover, members of the news media have repeatedly approached attorneys for petitioners seeking to hear or transcribe the recordings of the tapes which petitioners have made, and petitioners see no legitimate public interest to be served by refusing to give the news media access to communications which are already in the public domain.

The fact that the government says it has not had an

opportunity to compare the transcript submitted by petitioners with the actual tape is no reason for objecting to the tapes being made an official part of the record. If the government wishes to demonstrate that the tapes as transcribed by petitioners are wrong in any way, it can simply file what it considers to be a correct transcript.

Moreover, there could be no conceivable breach of any free press-fair trial standard in connection with Wallace's case and Wallace's attorney, James F. Neal, Esquire, has suggested no possible prejudice to his client, nor has he objected to the release of the tapes.

The government's allegation in its memorandum in opposition that the only purpose for the petitioners' efforts to have the transcripts of the tapes made a part of the official record and therefore placed in the public domain is to circumvent an agreement between government counsel and petitioners' counsel is untrue. The agreement that the government is apparently referring to was an agreement not to use the tapes in any way which would prejudice Wallace's rights to a fair trial or to disclose the tapes if their public disclosure would be likely to affect the outcome of the Wallace trial. Government counsel and petitioners' counsel are in disagreement about whether the tapes affect Wallace's trial.

In summary, petitioners do not want to be hamstrung in their use of the tapes by the government's apparent desire to classify them as secret so as to cover up its own mistakes. It is understandable that government officials acting in their own self interest in an effort to avoid embarrassment would try to cover up their mistakes, but there is no legitimate interest to be served by permitting them to do so.

IV. Miscellaneous Objections by Government

1. Discovery.--The government opposes our petition

on grounds that Rule 27 cannot be used for discovery. It is obvious, however, that litigants can obtain discovery if they otherwise meet the requirements of the rule. In this case the government employs or controls most of the fact witnesses in this case, but it has refused to permit any interviews or depositions of any of its people, has refused to give any information about the reasons for its employees' action and refused to permit Florida officials even to turn over autopsy reports or other information.

We cannot file suit because of the statutory delay in the Tort Claims Act, and therefore we are unable to secure and perpetuate testimony under normal rules. Our only alternative is to ask the court to order the government to turn over information and permit depositions. Unless the court requires this of the government, we will be totally dependent for protection of our interests on the FBI, an adversary party which may be trying to cover up a mistake. We need to secure the evidence requested in order to validate the tape recordings, the names of the voices thereon and the events described thereon while the facts are still fresh in the memory of the participants. These circumstances meet the requirement of the rule for perpetuation.

FBI agents are just as capable of concealing, losing, suppressing, forgetting and misrepresenting evidence as any other litigants or human beings and should not be treated differently from any other litigant or witness. FBI agents are just as capable of dying or being unavailable as anyone else, perhaps more so. In six months, witnesses can forget or die, decide to lose or suppress evidence, falsify, misplace reports and other evidence and get up untrue stories to explain their actions. We do not accuse FBI agents of such conduct, but we do say that agents are no less likely to protect their own self-interests than anyone else. Under such circumstances courts have permitted the securing and perpetuation of a wide range of evidence. See, e.g., Martin v. Reynolds Metals Corp.,

In response to the government's objection that the petition fails to state the substance of the evidence desired, we say the petition states with precision the evidence to be secured, and the petition, the administrative claim, the transcription of the tape recording and this brief show that such evidence is competent and material to the issues to be determined in the expected tort action. The only requirement is that the evidence be competent and material. See 4 Moore's Federal Practice § 27.06, 27.11 (1971).

In response to the government's objection that administrative regulations prohibit the disclosure of the evidence requested, we say that the regulation is not applicable and would be clearly invalid if applied to the court's order in this case. These rules only regulate the internal operations inside the Department of Justice and the FAA and have never been interpreted to limit a federal court's jurisdiction in an action wherein the government is a party. It is absurd to suggest that a federal department head by issuing an administrative regulation can change a federal court's inherent judicial powers over parties to litigation or override the Federal Rules of Civil Procedure adopted by the Supreme Court and approved by Congress except under congressional authority respecting documents the disclosure of which would damage national security. The government has neither asserted nor laid any foundation for asserting that these documents are official government secrets not discoverable for reasons of national defense. No court has ever so held and there is no authority for such a principle except in cases involving the disclosure of military secrets or information classified as an official government secret. See *Cresmer v. United States*, 9 F.2d 203 (E.D.N.Y. 1949); *Wunderly v. United States*, 8 F.R.D. 356 (E.D. Pa. 1948); *McCormick*, Evidence 302-09 (1954); *Sanford*,

Evidentiary Privileges Against the Production of Data Within
the Control of Executive Departments, 3 Vand. L. Rev. 73 (1949).

Respectfully submitted,
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Certificate of Service

I certify that a copy of this brief was mailed to all
counsel of record in this case on this 28th day of October, 1971.

Gilbert S. Merritt
Gilbert S. Merritt

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED

OCT 28 1971

BIG BROTHER AIRCRAFT, INC., et al.

Plaintiffs

WLAG-TV, INC.
WSM, INCORPORATED

Intervening Petitioners

vs.

JOHN VOLPE, et al.,

Defendants

MRS. ERENT QUINTON DOWNS, et al.

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents

BRANDON LEWIS, Clerk
BY _____ D.C.

CIVIL NO. 6322

CIVIL NO. 6348

MEMORANDUM OF WSM, INCORPORATED
IN SUPPORT OF MOTION TO INTERVENE

I

Rule 24(a) and Rule 24(b) are to be liberally construed, in order to avoid a multiplicity of suits, and the motion to intervene should be granted where possible. Brotherhood of Locomotive Engineers vs. Chi., M., St. P., and P.R. Co., 34 F. Supp. 594. Nuesse vs. Camp (C.A.D.C. 1967) 385 F.2d 385.

II

Should the motion be granted, the original petition, with intervening petitions, should be set for hearing at an early date. Intervenor WSM, Incorporated submits that Rule 12(a), Federal Rules of Civil Procedure does not apply, in that the language of 5 USCA 522(a)(3) clearly contemplates action thereunder calling for extraordinary process under expedited procedures. Although not necessarily the primary issue, this has been recognized in a number of cases, including Bristol-Myers vs. FTC (C.A.D.C. 1970), 424 F.2d 935.

III

With respect to the merits of the intervening petition, it should initially be pointed out that the language of the Freedom of Information Act, 5 USCA 522 (a)(3), strongly emphasizes that except for certain named exemptions each agency "shall make the records promptly available to any person." And under many cases cited in this memorandum and elsewhere it has been held that the statute shall be liberally construed so as to make the public's business truly the public's business.

At a preliminary hearing on this matter the Court inquired of the parties as to the effect of the fact that the actual conversations now reduced to tape recordings had been transmitted over a public radio frequency, and thus may already have been published.

Regardless of any publication in this sense, the voice tapes which constitute the records sought in this case have not been reproduced and made physically available to the public, so far as this intervenor is able to determine. In that sense they thus have not been made public, are still in the hands of the defendants in this proceeding, and hence are squarely covered by the terms of section (a)(3) of the Act. The fact that the content of the agency records in tape recording form may have been "published" by being spoken over a limited public radio frequency, or published in part by the newspapers, would seem to have no significance to this proceeding beyond emphasizing that no public harm will result from their release. The only exceptions to section (a)(3) of the Act are records published under paragraphs (1) and (2) thereof, which have no application here, and those records exempt under section (b).

Secondly the Court asked for comment as to the necessity of release of the tapes. This intervenor's first response to that inquiry is simply to refer to language of the statute above quoted, wherein the Congress has declared and established such a public interest and necessity. This question has, however, been the subject of discussion in several reported cases.

"In an action under the Freedom of Information Act, which shifts the burden of proof to the defendant, the balance of equities is presumptively on the side of disclosure." Consumers Union of U.S., Inc. vs. Veterans Administration (D.C. S.D. N.Y. 1969) 301 F. Supp. 796, 806. "The rule to be followed is this: where agency records are not exempted from disclosure by the Freedom of Information Act, a court must order their disclosure unless the agency proves that disclosure will result in significantly greater harm than good." Id.

We have here a situation in which intervenor television station, engaged in electronic journalism, has vainly requested an electronic record prepared by a government agency, for use in carrying out its public interest responsibilities imposed upon it by yet another government agency, where at least portions of the content of the record have already been published by the printed media. Certainly it cannot be said that the release of the electronic information asked "will result in significantly greater harm than good."

While intervenor is fully satisfied of its equitable position under the authorities just above cited, it would respectfully submit to the Court that it is entitled to the

records as a matter of law under the statute, unless such records fall within the statutory exemption. As was stated by the court in Epstein vs. Resor, (9th Cir. 1970) 421 F. 2d 930, 933, "Rather it would seem to be that [5 USCA 522] (b) was intended to specify the bases for withholding under (a)(3) and that judicial review de novo with the burden of proof on the agency should be had as to whether the conditions of exemption in truth exist."

Defendants contend that the records sought are exempt under the terms of section (b)(7), as "investigatory files". Intervenor submits that the requested records do not fall within the "investigatory file" exemption to the Public Information Act, in that previous proceedings in this Court indicate the tapes sought are of a routine nature kept and maintained at many airports under FAA jurisdiction. That such records may ultimately be used in some law enforcement proceeding does not bring them within the exemption. Bristol-Myers Co. vs. FTC., supra. Any administrative attempts to broaden the scope of the exemption would, of course, be invalid, and the burden of proof of the existence of the exemption is on the defendant. 5 USCA 522 (a)(3).

In any event, where all the information contained in the records requested is already in the hands of the parties who would be affected by pending and proposed litigation, as here, then the investigatory files exemption of the Act does not apply. Wellford vs. Hardin (D.C. Md. 1970), 315 F. Supp. 175, 178. As the court there stated, "Disclosure of material already in the hands of potential parties to law enforcement proceedings can in no way be said to interfere with the agency's legitimate law enforcement functions

Respectfully submitted

James R. Tuck
Attorney for Intervenor
WSM, Incorporated.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon counsel of record for all parties at interest in this cause by placing same in the United States mail addressed to said counsel at his office.

This the 28th day of October, 1971.

James R. Trick

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED

OCT 28 1971

BIG BROTHERS AIRCRAFT, INC.,
et al,
WLAC-TV, Intervener, and
WSM, INCORPORATED, Intervener

BRANDON LEWIS, Clerk

BY _____ D.C.

VS.

CIVIL NO. 6322

JOHN VOLPE, et al

MEMORANDUM IN SUPPORT OF INTERVENTION AND
PETITION FOR DISCLOSURE OF PUBLIC RECORDS

WLAC-TV supports its motion and petition on the following grounds:

1. Disposition of the main action may, as a practical matter, impair or impede the Intervener's ability to protect its interests in the property which is the subject of the action.

The Federal Rules of Civil Procedure, Rule 24(a)(2) allows intervention "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties".

The main action concerns the disposition to be made of certain tape recordings in which the Intervener claims a right under Title 5, Section 522, U.S.C., which gives the Intervener a right to make copies of these tape recordings as public records.

If the Court in the main action should order that the tape recordings be made a part of the Court file, then the agencies upon which the Intervener should make demand for disclosure could resist by claiming that the tape recordings are no longer in their possession. The same tape recordings are being sought both by the original

plaintiffs and by the Intervener. The defendants are the same. Since the action of this Court on original plaintiffs' motion shall determine the whereabouts of the tapes, Intervener's rights are, therefore, directly affected by the action of this Court and can be protected only by an order allowing intervention.

2. Intervener's interest is not adequately represented by existing parties.

The interest of the original plaintiffs is to preserve these tapes for possible use in a subsequent lawsuit under the Federal Tort Claims Act and to prevent loss or destruction of the tapes pending the time such action is brought. The interest of the Intervener is the production and copying of these tapes pursuant to the Federal statute which gives the Intervener the right to these tapes for public disclosure through the news media.

It is, therefore, clear that while both original plaintiffs and the Intervener are interested in the same property, the interest of the original plaintiffs is in preservation and the interest of Intervener is in copying making public disclosure. The original plaintiffs are not and cannot protect the interest of the Intervener.

3. Intervention should be allowed on the grounds of judicial economy.

Since this Court has had under consideration matters pertaining to the disposition of these tape recordings, it is in the interest of judicial economy that the Intervener proceed in this Court for their production and copying. Certain questions of law and fact are in common in both the original action and in the Intervener's action: namely, which Federal agency has custody and control of the tape recordings, whether discovery of these tapes by a litigant is possible, and whether these

tapes are protected by certain immunities and exemptions.

Rule 24(b) (2) allows permissive intervention "when an applicant's claim or defense and the main action have a question of law or fact in common".

Since the property and the questions of law are so interrelated, judicial waste would be created if the Intervener were compelled to proceed in a separate action in another court.

4. If WLAC-TV is not allowed to intervene, it requests that its petition be treated as an original complaint and heard concurrently with the motion of original plaintiffs.

The Federal Rules of Civil Procedure, particularly Rule 8(f), gives the Court broad discretion to treat pleadings so as to do substantial justice. Rule 8(c) indicates that the Court may change the designation of a pleading and may treat a pleading as if there had been a proper designation.

If the Court finds that this is not a proper case for intervention, WLAC-TV requests that the court treat its petition as an original complaint and that the Court proceed to set a hearing on that basis.

5. WLAC-TV proceeded to make "proper requests" until it became evident that the defendants were refusing to disclose the tape recordings under any circumstances.

Chris Clark, News Director for WLAC-TV, will testify that he had telephone conversations with the officers of the FAA and the FBI who are designated by the Code of Federal Regulations as being responsible for disclosure of public records. Certain of these officers at one time told Chris Clark that the tape recordings might be made available to him. Subsequently these officers made it clear to him that these tape recordings would not be made available and denied that the tape recordings were in the possession or control of the particular agencies.

Following these telephone conversations, Chris Clark, on behalf of WLAC-TV, sent written requests for the tape recordings in accordance with the specified rules and regulations. These requests have not been answered.

A court of equity will not require a party to do a useless act. It is abundantly clear that all attempts to proceed through regular channels are fruitless, and that the agencies involved have no intention of allowing WLAC-TV to copy the tape recordings. Since WLAC-TV is seeking speedy acquisition of the tapes for broadcast, it proceeded immediately into this Court to seek an order for the early production of the tapes.

6. The Freedom of Information Act confers on all citizens a right to compel disclosure of Federal records subject to nine (9) specific exceptions enumerated in the Act.

The Freedom of Information Act was enacted in 1967 against a background of Congressional concern over a growing problem of bureaucratic secrecy. The House report on the bill refers to "a blossoming Washington legend that agency and department heads enjoy a sort of personal ownership in news about their units" and states that "the weed of improper secrecy" was "choking out the basic right to know". H.R. No. 1497, 1966 U.S. Code, Cong. and Ad. News, p. 2419. The basic flaw in the then existing legislation was the broad, vague wording of the exemption provision, which permitted suppression of information upon "good cause found" or "in the public interest". The committee report states that:

"If none of the other restrictive phrases of 5 USC 1002 applies to the official government record which an agency wishes to keep confidential, it can be hidden behind the 'good cause found' shield. Historically, government agencies whose mistakes cannot bear public scrutiny have found 'good cause' for secrecy."

1966 U.S. Code, Cong. and Ad. News, p. 2423.

The purpose of the Freedom of Information Act, and the manner in which it deals with the above defect, is described in the committee report as follows:

"S. 1160 would revise [the Administrative Procedure Act] to provide a true federal public records statute by requiring the availability, to any member of the public, of all of the executive branch records described in its requirements, except those involving matters which are within nine (9) stated exemptions. It makes the following major changes:

1. It eliminates the 'properly and directly concerned' tests of those who shall have access to public records, stating that the great majority of records shall be available to 'any person' . . .
2. It sets up workable standards for the categories of records which may be exempt from public disclosure, replacing the vague phrases 'good cause found', 'in the public interest', and 'internal management' with specific definitions of information which may be withheld".

The Act carries out this legislative intent in the clearest possible terms. It provides that "each agency" on request for "identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person," and then lists nine (9) categories of records which are not producible under the Act. These exemptions are precisely worded. The intent of the Act to require disclosure of all documents not specifically exempted is underlined in the final subsection, which states:

"This section does not authorize withholdings of information or limit the availability of records to public, except as specifically stated in this section."

5 USC, Section 552(c).

The Committee comment upon this subsection is as follows:

"The purpose of this subsection is to make clear beyond doubt that all the materials of government are to be available to the public unless specifically exempt from disclosure by the provisions of subsection (e) or limitations spelled out in earlier subsections."

1966 U.S. Code, Cong. and Ad. News, p. 2429.

7. The Government cannot withhold a public record simply by labeling a file "investigatory" or by claiming a file is to be used for Government purposes only.

The Freedom of Information Act sought to remedy the consistent abuse of prior law by public officials. The House of Representatives Committee that investigated these abuses stated their findings as follows:

"Thus, even though [the prior law] is titled a 'public information section,' the requirements for publicity are so hedged with restrictions that it has been cited as the basic statutory authority for 24 separate terms-in addition to 'top secret', 'secret' and 'confidential' used by executive order only on national defense matters- which federal agencies have devised to stamp on administrative information they want to keep from public view. The 24 restrictive phrases range from the often-used 'official use only' through the simple 'non-public' and more complicated 'individual company data' to the long and confusing 'limitation on availability of equipment files for public reference'."

1966 U.S. Code, Cong and Ad. News, Vol. II, p. 2423.

The Freedom of Information Act gives a federal agency no authority to refuse disclosure of records unless those records clearly fall within the nine (9) enumerated exemptions.

8. The agencies cannot base their refusal to disclose the tapes on the fact that other agencies may also have an interest in them.

The Government relies upon 49 CFR Section 7.45 which purports to allow the FAA to refuse the record if another agency has primary interest in it. It is clear, however, that

under the Freedom of Information Act, Title 5, Section 552,

U.S.C., that no agency may base refusal on such a reason.

Section (c) of the Act states specifically, "This section

does not authorize withholding of information or limit the

availability of records to the public, except as specifically

stated in this section". The Act specifies nine (9) exemptions

by which a record may be withheld. None of the Nine (9)

exemptions allows refusal based upon the interest of another

agency.

In any event, even if the FAA argues that it does not have primary interest in the tape recordings, the FBI, which is the only other agency involved, is also before the Court in this matter.

The Federal statute allows a record to be obtained from any agency which has custody of such a record. All agencies that have custody, control, or interest in these tape recordings are now before this Court.

9. The Government cannot deny disclosure simply because the record requested may be involved in a matter pending before a court of law or administrative board.

The Government relies on 49 CFR Section 7.61(a)(2) and Section 7.65, both of which seek to prevent a disclosure of information concerning any matter pending before a court of law and of investigative files. These regulations purport to be included under certain exemptions from records discoverable under the Freedom of Information Act. U.S.C. Title 5, Section 552(b) provides:

"This section does not apply to matters that are--(5) inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency; . . . (7) Investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;"

It is clear from the statutes that in matters pertaining either to inter-agency memoranda or investigative files, the Government may refuse to release only those records which could not be discovered by a litigant under the discovery rules of the Federal Rules of Civil Procedure. These exemptions from disclosure have been discussed in a number of cases, and the result always reached is that if it is possible for any party conceivably to discover the record in any kind of litigation, then that record is subject to public disclosure under the Freedom of Information Act. See Consumer's Union of U.S., Inc. v. Veterans Administration, 301 F. Supp. 796 (1969); Grumman Aircraft Engineering Corporation v. Panegotiation Board, 425 F.2d 578 (D.C. Cir. 1970); Bristol-Myers Company v. F.T.C., 424 F.2d 935 (D.C. Cir. 1970).

In discussing the phrase "extent available by law to a party", one of the more thorough discussions is that of the Southern District of New York in Consumer's Union of U.S., Inc. v. Veterans Administration, 301 F. Supp. 796 (1969):

"The law which sets the limits of discovery of documents in civil actions with Government agencies once a good cause is shown is Rule 26(b) of the Federal Rules of Civil Procedure. The scope of discovery is quite broad,

"Unless otherwise ordered by the Court as provided by Rule 30(b) or (d), the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, . . . it is not ground for objection that testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence."

"The discoverability of documents is limited under Rule 26 by the nature of the action. Since the Freedom of Information Act exempts only records 'not available to a party other than an agency', it does not limit the action used to test the exemption to ones in which

the persons seeking the documents is or might be involved. To determine if the requirements of the fifth exemption are met, this Court must ask if the records sought are inter or intra-agency memoranda or letters which would not be available to any party in any litigation in which the agency having the records might now be involved. The fulcrum of this test is discovery practices as regulated by the courts, not discovery as it is practiced by the Government as suggested by the Attorney General's memorandum."

"The distinction between documents that are parts of the administrative reasoning process and factual or investigatory reports is found in other cases as well, and is supported by dictum in another case involving this exemption. The distinction was also used to determine the scope of the seventh exemption which also turns on the availability of the records in a civil action with the Government." American Mail Line, Ltd. v. Gulick, 411 F. 2d 696 (D.C. Cir. 1969); Cooney v. Sun Ship Building and Dry Dock Co., 288 F. Supp. 708 (E.D. Pa. 1968).

"To decide whether the records sought here are within the fifth exemption, this Court must determine whether they were part of the deliberative process of the agency or were factual in substance. The legislative history of the Act supports this conclusion. The language 'which would not be available by law to a party other than an agency in litigation with the agency' was substituted on the recommendation of the Senate Judiciary Committee for 'dealing solely with matters of law or policy'". Senate Report 1-2.

... It is at least clear, in light of the strong congressional drive to promote disclosure, that the amendment was not intended to place 'factual material' within the coverage of the fifth exemption." Id. at 804.

The legislative history of the Freedom of Information Act makes it crystal clear that unless a record is immune from discovery by a litigant with an agency, it is available to the public under this act.

"Thus, any internal memoranda which would routinely be disclosed to a private party through the discovery process in litigation with the agency would be available to the general public."

U.S. Code, Cong. and Ad. News, Vol. II, (1966), p. 2428.

Other cases under the act have held that the exemption of inter-agency or intra-agency memoranda or letters

from public disclosure was designed to protect only internal working papers in which opinions are expressed and policies formulated and recommended and may not be applied to purely factual data. This exemption does not allow the Government to throw a protective blanket over all information by casting it in the form of internal memoranda. Bristol-Myers Company v. FTC, 424 F.2d 935 (D.C. Cir. 1970).

It is clear that the tape recordings sought by WLAC-TV in the present case are factual data and are not internal working papers of Government agencies. It is also clear that these tape recordings would be discoverable by a party in litigation with the Government, and are, therefore, available to the public. It is submitted that in a case such as that presented by the original plaintiffs under the Federal Tort Claims Act, these records are directly relevant to the claim and are discoverable under the Federal Rules of Civil Procedure. These tape recordings are the best record of the occurrence by which three people lost their lives, and would not be immune to discovery by a party claiming negligence in that occurrence. That being true, they are clearly available to any person as public records under the Freedom of Information Act.

10. The Government cannot deny disclosure on the grounds that the tape recordings are part of an investigatory file.

The statute clearly states that investigatory files are protected from disclosure only to the extent that items in them could not be discovered by a party to a lawsuit. Only the "work product" of the lawyers and investigators are protected. Factual material in an investigative file is not protected if it could not be reached under the discovery rules of the Federal Rules of Civil Procedure.

The tape recordings sought by WLAC-TV are factual data, and are not part of the work product of an investigation.

These tape recordings were made pursuant to a routine FAA directive that all communications between air traffic control centers and aircraft be recorded. This routine procedure is unrelated to any investigation. The Communications that were recorded were sent out over the airways and were available to any party who happened to be tuned in to them. Chris Clark will testify that an FAA official told him that these tape recordings are normally made available to a party upon request. The recordings were made pursuant to a routine Government procedure, and not pursuant to an investigation by a law enforcement agency.

The Government cannot protect these tapes from disclosure simply by putting them into a file labeled "investigative". Bristol-Myers Company v. FTC, 424 F.2d 935 (D.C. Cir. 1970). Therefore, the "investigatory file" exemption does not apply for two reasons: the tapes were not made pursuant to an investigation, and the tapes are discoverable by a litigant under regular discovery rules.

11. The Government cannot require an aggrieved party to have a request "reconsidered" by an agency before filing suit under the Freedom of Information Act.

The Freedom of Information Act intended and provided that records be made "promptly available" to a requesting party. The legislative history of the Act clearly states that the statute was passed because the Government consistently refused to turn over information to the public and press by using prolonged delaying tactics and by labeling files "secret" or "confidential" when they were not entitled to such labels. 1966 U.S. Code, Cong. and Ad. News, Vol. II, p. 2422. The Act provides that after refusal by an agency, any person may go directly to the District Court of the United States in order to have his request adjudicated. In order to encourage the

prompt disclosure of requested information, the Act provides that "complaints under this act take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way". The House of Representatives Report stated that "the Court review procedure would be expected to serve as an influence against the initial wrongful withholding". Id. at 2426.

It is therefore clear that an agency cannot compel a person who has been refused requested records to reapply to the agency for another hearing, when the statute clearly gives the requesting party the right to go immediately into Federal Court after refusal by the agency.

12. "A case brought under the Freedom of Information Act must be heard at the 'earliest practicable date and expedited in every way', and the Government cannot require a sixty (60) day delay before filing its answer."

As stated above, the purposes of the Act is to provide "prompt" disclosure of government records. The language of the statute is very clear on this point:

"Except as to causes the Court considers of greater importance, proceedings before the District Court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way."

In commenting on this provision of the statute, the House Report states:

"The Court is authorized to expedite actions under subsection (c) 'in every way,' and the Court review procedure would be expected to serve as an influence against the initial wrongful withholding instead of adding substantially to crowded court dockets."

1966 U.S. Code, Cong. and Ad. News, Vol. II, p. 2426.

The phrases "earliest practicable date" and "expedited in every way" precisely indicate that the usual rule for answer and hearing may be suspended, and that the Government may be given only such time to answer as is reasonable.

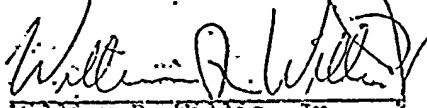
It is not suggested that an unreasonable burden be placed upon the Government, but only that the Government answer and be ready for hearing at "the earliest practicable date".

The statute's directive to expedite the case "in every way" certainly gives the Court authority to require that the Government answer and be ready for trial at the earliest reasonable date.

13. WLAC-TV will pay all fees required by the agency for copying these tapes, but it is unable to determine from the regulations what fees are applicable.

Respectfully submitted,

WILLIS, KNIGHT & BARR



William R. Willis, Jr.



John W. Wagster

Attorneys for WLAC-TV

I CERTIFY THAT A COPY THE ABOVE PLEADING
HAS BEEN FURNISHED TO COUNSEL FOR ALL IN-
TERESTED PARTIES BY DELIVERY OR BY PLACING
SAME IN THE UNITED STATES MAIL POSTAGE
PREPAID. THIS 21 DAY OF SEP 71

WILLIS, KNIGHT & BARR

By 

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

BIG BROTHER AIRCRAFT, INC.,
et al.,
Plaintiffs

WLAC-TV, INC.
WSM, INCORPORATED,

Intervening
Petitioners,

CIVIL NO. 6322

V.

JOHN VOLPE, et al.,

Defendants

MRS. BRENT QUINTON DOWNS,
et al.,

Petitioners,

V.

CIVIL NO. 6348

UNITED STATES OF AMERICA,

Respondents

SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO MOTIONS TO
INTERVENE, IN OPPOSITION TO APPLICATION TO HAVE
TRANSCRIPT MADE PART OF PUBLIC RECORD, AND IN OPPO-
SITION TO PETITION PURSUANT TO RULE 27, FEDERAL
RULES OF CIVIL PROCEDURE

1. This court lacks jurisdiction over the subject matter
of the above-styled actions for the following reasons.

a). In Civil No. 6322, the suit in which the two
television stations seek to intervene, jurisdiction in the
original complaint is premised upon 28 U.S.C. § 1651. However,
this statute, which confers powers upon the courts to issue
"all writs necessary or appropriate in aid of their jurisdictions",
does not confer of itself any jurisdiction on this court.

Stafford v. Superior Court of Cal. In and for Los Angeles County
272 F.2d 407 (9th Cir. 1959), cert. denied 362 U.S. 979. The

statute may be invoked in a district court only as an aid to already existing jurisdiction. United States ex rel. Rollington v. Blackfeet Tribal Court of Blackfeet Indian Reservation, 244 F.Supp. 4704 (D.C. Mont. 1965).

Since the court does not have jurisdiction over the original complaint filed in Civil No. 6322, it certainly should not grant the television stations' motions to intervene, especially since the intervening petitions allege jurisdictional grounds not alleged in the original complaint, and seek relief not sought in the original complaint.

To be sure, the intervenor still must take the main suit as he finds it, . . . in the sense that he cannot change the issues framed between the original parties, and must join subject to the proceedings that have occurred prior to his intervention; he cannot unring the bell . . .

Hartley Pen Co. v. Lindy Pen Co.,
16 F.R.D. 141, 153 (S.D. Cal. 1954)

In this case all of the relief prayed for in the original complaint has already been granted by an agreed order. As stated by the Supreme Court in Columbia Gas & Electric Corp. v. American Fuel & Power Co., 322 U.S. 379, 383 (1944), the intervenor is "limited to the field of litigation open to the original parties."

b). In Civil No. 6348, the petition against the United States pursuant to Rule 27 of the Federal Rules of Civil Procedure, this court's jurisdiction depends upon whether the expected action against the United States pursuant to the Federal Tort Claims Act will be within the jurisdiction of the federal courts. Petition of Ferkauf, 3 F.R.D. 89 (S.D. N.Y. 1943); 4 MOORE'S FEDERAL PRACTICE, paragraph 27.03, p. 1813.

It is clear that the cause of action alleged in Exhibit A to the petition states a claim for damages caused by governmental officials' actions in attempting to capture persons hijacking an

airplane in violation of federal law. The manner in which federal officials fulfill their duty to maintain law and order is discretionary, and petitioners' claim thus falls squarely within the "discretionary function" exception to the Federal Tort Claims Act, 28 U.S.C. § 2680(a). United States v. Faneca, 332 F.2d 872 (5th Cir. 1965); Nichols v. United States, 236 F.Supp. 260 (N.D. Miss. 1964); Dalehite v. United States, 346 U.S. 15 (1953); Muniz v. United States, 280 F.Supp. 542 (S.D. N.Y. 1968). Therefore, under the statutory language of 28 U.S.C. § 2680, the provisions of 28 U.S.C. § 1346(b), conferring jurisdiction upon the district courts over tort claims against the United States, "shall not apply." As said by our own Sixth Circuit Court of Appeals in United States v. Taylor, 236 F.2d 649, 652 (1956),

... it seems obvious that the exceptions to the Federal Tort Claims Act liability contained in 28 U.S.C.A. § 2680 are jurisdictional.

Since the federal courts would not have jurisdiction to entertain petitioners' anticipated action under 28 U.S.C. § 1346(b), it seems apparent that this court may not entertain this Rule 27 petition to preserve evidence for use in that action.

2. The court should not grant the request of the Petitioners to intervene for the following reasons:

a). The nature of the petition to intervene is such that it may appear to the court that WLAC-TV, Inc., and WSM, Inc., are really attempting to proceed pursuant to Rule 27 of the Federal Rules of Civil Procedure, although the action in which they seek to intervene was actually brought pursuant to 28 U.S.C. § 1651. However, if this petition were treated as a Rule 27 proceeding, the court would not have jurisdiction to act upon their request.

Under Rule 27(a) the petition must be filed in the district wherein any expected adverse party resides. Here, none of the adverse parties named in the Intervenor's petition are residents of the Middle District of Tennessee, but rather they are residents of Washington, D. C. Thus, the petition could only be filed in Washington, D. C. See Petition of Haussler, 10 F.R.D. 134 (1950), which held that depositions could only be properly taken in Washington, D. C. when the Attorney General was the only adverse party.

Moreover, the intervening petitioners do not propose to bring any action against the named defendants in the future. Therefore, they do not have a right to participate in discovery against these defendants pursuant to Rule 27.

b). The Public Information Act, 5 U.S.C. §552(b)(7), specifically exempts "investigatory files" from discovery. In the instant case, the Federal Bureau of Investigation has, in good faith, made the tape recordings sought by the Petitioners part of their investigatory files in connection with the possible prosecution of a related, pending criminal case. These tape recordings were made a part of the F.B.I.'s investigatory files not for the purpose of concealing information but rather for the purpose of promoting fair administration of justice.

To grant the petitioners' request to release the tape recordings would be to allow room for possible claims of prejudice by the defendant in the pending criminal prosecution aforementioned.

As stated in the Memorandum In Opposition to Petition to Intervene, the Petitioners have failed to show that the disposition of the original case will be such as to impair or impede their ability to protect their interests as required by Rule 24(a) of

Federal Rules of Civil Procedure. If the court denies the motion to perpetuate, the parties will still have at their disposal all of the adequate, customary remedies and discovery procedures which every litigant has under the Federal Rules. There has been no showing on the part of the petitioners that the tape recordings should be made public at this point at the expense of prejudicing the Government's interests.

As stated by the court in Campbell v. Eastland, 307 F.2d 478 (5th Cir., 1962), the trial judge in civil proceedings should not

... ignore the effect discovery would have on a criminal proceeding that is pending or just about to be brought. The very fact that there is a clear distinction between civil and criminal actions requires a government policy determination of priority: which case should be tried first. Administrative policy gives priority to the public interest in law enforcement. This seems so necessary and wise that a trial judge should give substantial weight to it in balancing the policy against the right of a civil litigant to a reasonably prompt determination of his civil claims or liabilities.

CONCLUSION

It is the Government's position that for the above-mentioned reasons the Petition to Intervene, the Motion to Have the Transcript Made a Part of the Record, and the Petition Pursuant to Rule 27, Federal Rules of Civil Procedure should be denied.

Respectfully submitted,

CHARLES H. ANDERSON
United States Attorney

By: Lawrence Ray Whitley
Lawrence Ray Whitley
Assistant U. S. Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon counsel of record for all parties at interest in this cause by placing same in the United States mail addressed to said counsel at his office.

This the 28th day of Dec. 1962
Ames Davis
Assistant United States Attorney

By: Ames Davis
Ames Davis
Assistant U. S. Attorney

Photostatic reproductions of the complaints, motions, memoranda, and other actions filed in this case in U. S. District Court, Middle District of Tennessee, Nashville, Tennessee, were made available by the U. S. Attorney's Office, Middle District of Tennessee, Nashville, Tennessee.

On October 26, 1971, U. S. District Judge FRANK GRAY, JR., Middle District of Tennessee, Nashville, Tennessee, at a hearing set on that date advised that the Court was not yet in a position to render any decision in the civil actions that were filed in this case. Judge GRAY stated that responses to the Government's motions in opposition to actions filed should be filed by the respondents no later than October 28, 1971. Judge GRAY reset hearing for 1:30 P.M., November 1, 1971, at which time he would render a decision in this case regarding the civil actions.

FEDERAL BUREAU OF INVESTIGATION
FOIPA
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Page 83 ~ Duplicate

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